

PROPOSED WITNESS TESTIMONY

In addition to the 126 exhibits contained in Vols. 1-4 of the Mass Media Bureau Exhibits, the Bureau intends to call Edward J. Sackley, III, Robert Watson and Steven Kline as witnesses in the presentation of its direct case in this matter.

Mr. Sackley is expected to testify about the matters described in his affidavit (MMB Ex. 23). Mr. Watson and Mr. Kline, both employees of Pathfinder, are expected to testify about the operations of Stations WRBR and WBYT.

MASS MEDIA BUREAU'S EXHIBITS

Volume 1

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re)

HICKS BROADCASTING)
OF INDIANA, LLC)

MM Docket No. 98-66

Order to Show Cause Why the License for)
FM Radio Station WRBR(FM),)
South Bend, Indiana, Should Not Be Revoked;)

and)

PATHFINDER COMMUNICATIONS CORP.)

Order to Show Cause Why the License for)
FM Radio Station WBYT(FM),)
Elkhart, Indiana, Should Not Be Revoked;)

and)

Applications of)

MICHIANA TELECASTING CORP.)
(ASSIGNOR))

and)

PATHFINDER COMMUNICATIONS CORP.)
(ASSIGNEE))

File Nos. BAL-960809GQ &
BALH-960809GR

For assignment of the licenses of:)
WNDU-AM-FM, South Bend, Indiana)

To: Pathfinder Communications Corporation

**MASS MEDIA BUREAU'S REQUEST FOR ADMISSION
OF FACT AND GENUINENESS OF DOCUMENTS**

The Chief, Mass Media Bureau, by his attorneys, pursuant to Section 1.246 of the Commission's Rules, hereby requests that, within ten days of the service of this request, Pathfinder Communications Corporation ("Pathfinder") admit to the truth of the facts set forth

41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

[illegible]

and the genuineness of documents attached hereto.¹ Each response shall be labelled with the same number as the subject admission request and shall be made under oath or affirmation by the person making the response. In addition, respondent is reminded that Section 1.246 provides that "[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested he shall specify so much of it as is true and deny only the remainder."

Admissions

1. John F. Dille, III, ("Dille" or "John Dille") President, a director, and majority stockholder of Pathfinder, was contacted in the summer of 1992 by John Booth of Booth American Company ("BAC") for the purpose of discussing a Joint Sales Agreement involving Radio Station WBYT(FM)(formerly WLTA(FM)), Elkhart, Indiana, licensed to Pathfinder, and WRBR(FM), South Bend, Indiana, then licensed to BAC.

2. Following negotiations between Pathfinder and BAC, a Joint Sales Agreement ("JSA") was in fact entered into between those parties on December 18, 1992.

3. Attachment 1 hereto is a genuine copy of the JSA entered into on December 18, 1992.

4. In the Spring of 1993, Dille learned of BAC's interest in selling Station WRBR and a series of discussions occurred about the possible purchase of WRBR by Pathfinder.

5. The acquisition of WRBR by Pathfinder would have required a waiver of the radio-newspaper cross-ownership rule, Section 73.3555(d) of the Commission's rules, 47

¹ All references to "Pathfinder" herein encompass the corporate entity, its stockholders, officers, directors, employees, and agents, as well as related entities, including Truth Publishing Company, Inc., Federated Media, and Sign-Pro.

C.F.R. § 73.3555(d), because Dille had -- and still has -- an attributable interest in Truth Publishing Company, Inc., publisher of the Elkhart Truth, a daily newspaper published in Elkhart, Indiana, a community entirely within the predicted 1 mV/m contour of Station WRBR.

6. In July 1993, BAC indicated to Dille that it was unwilling to enter into an agreement to sell WRBR to Pathfinder that was dependent upon favorable FCC action on a request for a waiver of the radio-newspaper cross-ownership rule.

7. Thereafter Dille contacted David Hicks and proposed that Hicks should become the controlling principal of an entity that would acquire the license of WRBR.

8. Subsequent to his initial contact with Hicks, Dille decided that his three children -- John F. Dille, IV, Sarah F. Dille, and Alec C. Dille (collectively, "the Dille children") -- would hold the noncontrolling interest in the proposed entity in three equal parts, to which David Hicks agreed.

9. On August 17, 1993, Dille sent by fax to John Booth a Note proposing the sale of WRBR to the new entity including Hicks and Dille's children, provisionally identified as Newco.

10. Attachment 2 hereto is a genuine copy of the Note faxed to John Booth on August 17, 1993.

11. On August 17, 1993, Pathfinder's counsel, Alan Campbell, prepared and sent a Memorandum concerning the proposed transaction to John Quale, counsel for BAC.

12. Attachment 3 hereto is a genuine copy of the August 17, 1993, Memorandum.

13. Dille's efforts to organize an entity for the purpose of acquiring the license of WRBR were designed in substantial part to ensure that the entity that succeeded BAC as the licensee of WRBR would continue the Joint Sales Agreement with Pathfinder.

14. On November 30, 1993, an Asset Purchase Agreement ("APA") was entered into between BAC and Hicks as agent for an Indiana limited liability company to be formed.

15. The purchase price and terms of payment specified in the APA were substantially similar to the purchase price and terms of payment that had previously been negotiated between BAC and Pathfinder.

16. John Dille assured BAC principal John Booth informally that Dille or his children would ensure payment of the amounts due to BAC, irrespective of what happened.

17. Prior to November 30, 1993, Dille had proposed to Hicks some form of option or buy/sell arrangement whereby the Dille children would be able to acquire the controlling interest of Hicks in the company to be formed to acquire the WRBR license; and Hicks had expressed no objection to such an arrangement to Dille.

18. Prior to November 30, 1993, none of the Dille children had met with Hicks regarding the proposed venture to acquire the WRBR license.

19. On November 30, 1993, the sum of \$24,500 was deposited in an escrow account in the form of three approximately equal payments from the Dille children to cover their portion of an escrow deposit required by the APA.

20. Prior to the escrow deposit, John Dille had written checks to each of his children in the amount of their individual escrow obligation, which the children deposited in

their own accounts. The Dille children then wrote checks to the escrow agent in the same amount as the funds received from Dille.

21. Attachment 4 includes genuine copies of cancelled checks, deposit slips, and memoranda to each of the Dille children from Robert Watson, Secretary-Treasurer of Pathfinder, reflecting the transactions described in the two foregoing Requests.

22. An application for Commission approval of the assignment of the WRBR license from BAC to the entity now known as Hicks Broadcasting of Indiana, LLC (HBI) was filed on December 22, 1993.

23. The HBI application was filed by the the law firm of Irwin, Campbell & Crowe, P.C., which also represented Pathfinder at the time.

24. Attachment 5 hereto is a genuine copy of letter dated February 22, 1994, addressed to the Commission and signed by John Dille.

25. When he signed Attachment 5, John Dille knew that it would be submitted to the Commission in connection with the HBI assignment application; and that its purpose was to respond to a request for additional information made by the Commission's staff.

26. When he signed Attachment 5, John Dille knew that he had provided and intended in the future to provide funds to the Dille children to enable them to meet their obligations to HBI and that some or all of the funds provided to HBI by the Dille children would be used to discharge HBI's obligations to BAC under the APA.

27. Attachment 6 hereto is a genuine copy of a February 17, 1994, letter from Alan C. Campbell, counsel representing HBI in connection with the acquisition of WRBR, to Hicks reflecting that a copy was sent to Robert Watson, Secretary/Treasurer of Pathfinder.

28. A copy of the February 17, 1994, letter was received by Pathfinder shortly after the date thereof and has been in Pathfinder's files since that time.

29. Approval of the assignment of the WRBR license from BAC to HBI was granted by the Commission on March 16, 1994.

30. BAC and HBI closed on the sale of WRBR on March 31, 1994.

31. BAC's rights and obligations under the Joint Sales Agreement with Pathfinder were assigned to HBI at the closing.

32. In connection with the closing, Hicks and the Dille children entered into a Side Letter dated March 31, 1994.

33. A genuine copy of the Side Letter is attached here as Attachment 7.

34. John Dille negotiated the Side Letter on behalf of his children.

35. On March 23, 1994, HBI and Pathfinder entered into an agreement whereby Pathfinder would provide accounting services to HBI.

36. Attachment 8 hereto is a genuine copy of the accounting agreement.

37. The accounting agreement was amended on December 29, 1995.

38. Attachment 9 hereto is a genuine copy of the amendment to the accounting agreement.

39. Vendors and employees of WRBR have, since HBI became the licensee, been paid by Pathfinder with checks written on a checking account that bears Pathfinder's name, but is marked with a stamp as being for HBI.

40. Under the APA between BAC and HBI, payments of \$5,000 were due on October 1, November 1, and December 1, 1994, and January 1, February 1, and March 1, 1995.

41. For each of the \$5,000 payments due as indicated in the foregoing Request, the Dille children paid the collective sum of \$2,450.00 on a pro rata basis.

42. Prior to each such payment, John Dille provided each of his children with a check in the amount of the payment due.

43. Pursuant to the APA, HBI was obligated to pay BAC \$105,000 by April 1, 1995.

44. The \$105,000 payment was made entirely by the Dille children in equal payments of \$35,000.

45. Each of the Dille children wrote a check in the amount of \$35,000 to HBI, prior to which each had received a check from John Dille in that amount.

46. Attachments 10, 11 and 12 are genuine copies of March 20, 1995, memoranda to each of the Dille children from Robert Watson, Secretary-Treasurer of Pathfinder, transmitting the check from John Dille and providing payment instructions.

47. The payments of \$35,000 from each of the Dille children were initially treated as paid in capital in the books of HBI, which were maintained by Pathfinder, but were reclassified as loans in December 1995.

48. On December 29, 1995, the Dille children received checks from HBI in the amount of \$42,999.99 to John F. Dille, IV; \$43,000 to Sarah Dille; and \$43,816.67 to Alec Dille.

49. The payments referenced in the foregoing Request were treated as repayment of loans for funds provided in connection with the November 30, 1993, escrow deposit and the \$105,000 payment to BAC due by April 1, 1995.

50. The December 29, 1995, payments to the Dille children did not include any interest payments.

51. The Dille children have not returned any portions of the December 29, 1995, payments to John Dille.

52. Subsequent to the \$105,000 payment due to BAC by April 1, 1995, the next payment due to BAC was a \$10,000 payment due by April 1, 1996, which was paid by Hicks.

53. The next payment due to BAC was a \$10,000 payment due by May 1, 1996, which was paid by the Dille children.

54. Each of the Dille children received a check in the amount of their share of the payment due May 1, 1996, from John Dille, after which they wrote a check in the amount of their share to HBI.

55. The next payment due to BAC was a \$10,000 payment due by June 1, 1996, which was paid by Hicks and the Dille children on a pro rata basis.

56. Each of the Dille children received a check in the amount of their share of the payment due June 1, 1996, from John Dille, after which they wrote a check in the amount of their share to HBI.

57. All payments to BAC subsequent to the payment due June 1, 1996, have been paid from the proceeds of the operations of station WRBR.

58. Steve Kline was hired in September 1993 to be the general manager of WBYT(FM) and WRBR(FM) after an interview with John Dille and David Hayes, a Pathfinder employee.

59. Steve Kline did not meet David Hicks until sometime in the summer of 1994.

60. Pathfinder employees holding the following positions have performed the same duties for WRBR since HBI's acquisition of the license: Chief Engineer, Operations Manager, Production/Continuity, Event Coordinator, General Sales Manager, Office Manager/Traffic, and General Manager.

61. During some periods following the acquisition of WRBR by HBI, Phil Britten, a Pathfinder employee, was the Program Director of both WRBR and WBYT.

62. During some periods following the acquisition of WRBR by HBI, Joe Turner, a Pathfinder employee, was the Assistant Program Director of both WRBR and WBYT.

63. Since the acquisition of WRBR by HBI, news programming broadcast on WRBR has come primarily from the radio news room of station WTRC(AM), Elkhart, Indiana, which is licensed to Pathfinder, which programming has been broadcast on WTRC and WBYT as well as WRBR.

64. Since the acquisition of WRBR by HBI, Pathfinder employees have been responsible for a change of format at WRBR.

65. Since the acquisition of WRBR by HBI, Pathfinder personnel policies and its Employee Manual have also applied to employees of WRBR.

66. Stations WRBR and WBYT share the same office and studio space.

67. Since the acquisition of WRBR by HBI, there has been no written agreement between Pathfinder and HBI with respect to the sharing of office and studio space.

68. At least until the release of the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, in this proceeding, FCC 98-88, released May 18, 1998, the law firm of Irwin, Campbell & Tannenwald, P.C. (or predecessors thereof), has represented both Pathfinder and HBI.

69. Except for the Joint Sales Agreement and the accounting agreement, there are no written agreements concerning the sharing of costs by Pathfinder and HBI.

70. HBI experienced a net operating loss of \$161,684 as of December 31, 1994, which was funded by Pathfinder as loans for which no interest was charged.

71. Pathfinder also funded as interest-free loans operating losses that occurred at various times in 1995 and 1996.

72. Since HBI's acquisition of WRBR, there has been no written loan agreement between Pathfinder and HBI.

73. Hicks was on the payroll of Truth Publishing Company, Inc. ("Truth"), a related entity to Pathfinder, from September 1, 1994 to December 31, 1994, as an employee of Sign-Pro of Indiana, Inc. ("Sign-Pro") (a vinyl sign business owned by John Dille).

74. Beginning January 1, 1995, Hicks also provided assistance to all of Pathfinder's radio stations in the area of national sales, in addition to working parttime for Sign-Pro.

75. Effective July 1, 1995, Hicks ceased to be involved with Sign-Pro and became General Manager of radio stations WCUZ(AM), WCUZ-FM, Grand Rapids, Michigan, and

WAKX(FM), Holland, Michigan, all of which were licensed to Pathfinder, a position he held until March 1, 1997.

76. From September 1, 1994, to July 1, 1995, Hicks' salary was approximately \$70,000 per year, plus possible bonuses and other fringe benefits.

77. Subsequent to July 1, 1995, Hicks' salary is approximately \$100,000 per year, plus possible bonuses and other fringe benefits.

78. Truth publishes a daily newspaper in Elkhart, Indiana, the Elkhart Truth.

79. The 1 mV/m contour of WRBR encompasses the entire community of Elkhart, Indiana.

80. John Dille has owned stock in Truth and Pathfinder constituting attributable interests pursuant to Section 73.3555 of the Commission's Rules since the JSA agreement with WRBR was entered into on December 18, 1992.

81. Attachment 13 hereto is a genuine copy of an amendment to the applications for assignment of license for stations WNDU(AM) and WNDU-FM, South Bend, Indiana, filed by Pathfinder on April 3, 1997.

82. Attachment 14 is a true and accurate copy of the civil trial deposition given by John F. Dille, III, on December 8, 1995, in *Hicks v. Crystal Radio Group, Inc.*, No. B94-3603-NZ (Michigan Circuit Ct., Kalamazoo, Michigan).

83. Attachment 15 is a true and accurate copy of the civil trial deposition given by Robert Watson, on January 30, 1996, in *Hicks v. Crystal Radio Group, Inc.*, No. B94-3603-NZ (Michigan Circuit Ct., Kalamazoo, Michigan).

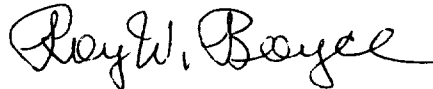
Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



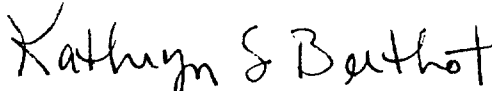
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June 29, 1998

CERTIFICATE OF SERVICE

Talya Lewis, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 29th day of June 1998, sent by regular United States mail, one copy of the foregoing "**Mass Media Bureau's Request for Admissions of Fact and Genuineness of Documents**" to:


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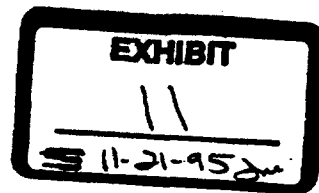
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Chief Administrative Law Judge Joseph Chachkin
Federal Communications Commission
2000 L Street, N.W., Suite 226
Washington, D.C. 20554


Talya Lewis

Attachment 1

JOINT SALES AGREEMENT



THIS JOINT SALES AGREEMENT (the "Agreement"), dated as of the 18th day of December, 1992, by and between PATHFINDER COMMUNICATIONS CORPORATION, an Indiana corporation ("Pathfinder") and BOOTH AMERICAN COMPANY, a Michigan corporation ("Booth").

RECITALS:

WHEREAS, Booth is the licensee of radio station WRBR-FM, South Bend, Indiana ("WRBR"); and

WHEREAS, Pathfinder is the licensee of radio station WLTA(FM), Elkhart, Indiana ("WLTA"); and

WHEREAS, Booth and Pathfinder desire to enter into a joint sales arrangement for the sale of advertising time on WRBR and WLTA, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants herein contained, the parties agree as follows:

§ 1. Definitions. In addition to other terms defined elsewhere in this Agreement, the following capitalized terms, as used in this Agreement, shall have the meanings set forth in this Section:

§ 1.1. "Arbitron Metro Audience Share(s)" shall mean the average of the respective station's Monday - Sunday, 6:00 a.m. to midnight shares as reported in the two most recently released Arbitron Rating Reports for the South Bend, Indiana Metro Survey Area.

§ 1.2. "CPI" shall mean the U.S. Department of Labor, Bureau of Labor Statistics, Revised All-Cities Consumer Price Index for All Urban Consumers, except that, if such publication ceases to exist, "CPI" shall mean another similarly reliable governmental publication selected by the parties.

§ 1.3. "Station" shall mean either WRBR or WLTA.

§ 1.4. "Stations" shall mean WRBR and WLTA.

§ 1.5. "Venture" shall mean the contractual relationship created by this Agreement pursuant to which Booth and Pathfinder shall sell advertising time on the Stations.

§ 2. Venture Operations.

§ 2.1. Offices. The Venture's principal office shall be located at 1 Edison Centre, Mishawaka, Indiana, or at such other location as the parties may from time to time agree upon.

§ 2.2. Name. The Venture shall engage in business under the name of "Radio One Marketing of Michiana" or under such other name as the parties may agree upon in the future. In connection with the use of such name, the parties agree to cooperate with one another in complying with applicable laws and to cause such assumed or fictitious name filings as may be required by law to be made.

§ 2.3. Purpose; Exclusivity. The purpose of the Venture shall be to sell advertising time on, and provide advertising support to, the Stations. Except as otherwise provided in Sections 6.1 and 7.5 below, Pathfinder and Booth agree that during the term of this Agreement, neither party shall enter into any time brokerage, program provision, local management, sales, joint operating, or similar agreement with any third party with respect to the Stations, nor shall either party sell any advertising time on the Stations, except through the services of the Venture.

§ 2.4. Relationship of the Parties. Pathfinder and Booth agree that the Venture shall not constitute a separate legal entity for tax or any other purposes. The Venture shall not own property in its name. All assets held on behalf of the Venture, if any, shall be deemed to be assets jointly owned by Pathfinder and Booth, in accordance with their respective interests specified in this Agreement; provided, however, that title to any assets contributed to the Venture by either Pathfinder or Booth shall remain with the party making the contribution and shall not be considered as being jointly owned by Pathfinder and Booth.

§ 2.5. Personnel.

(a) Booth and Pathfinder shall employ, or make available from their existing employees, such employees as shall be necessary to enable the Venture to perform its functions under this Agreement with respect to the sale of advertising for the Stations and all sales and administrative support related thereto, with Booth and Pathfinder each permitted to designate certain mutually agreed upon employees from their respective existing staffs to become the Venture's employees. All employees except Vince Ford working on behalf of the Venture shall be employees of Pathfinder and shall be

subject at all times to Pathfinder's supervision and discipline.

(b) In the event of termination of this Agreement, Booth will have the right to negotiate with any of its former employees who are still employed by Pathfinder to return to Booth; however, such employees will be under no obligation to return to Booth's employ.

§ 3. Management and Control of the Venture.

§ 3.1. Management Committee.

(a) The Venture shall be managed by a Management Committee, which shall have four (4) members. Two members of the Management Committee shall be selected and may be removed and replaced from time to time by Booth in its sole discretion, and two members of the Management Committee shall be selected and may be removed and replaced from time to time by Pathfinder in its sole discretion. The Booth and Pathfinder representatives shall be given the authority to grant Booth's and Pathfinder's consent, respectively, as to decisions to be made by the Management Committee.

(b) A member of the Management Committee shall serve until he or she resigns or is removed. A member of the Management Committee may resign at any time by filing a written resignation with the Management Committee. All resignations, appointments and replacements of members shall become effective by written notice to the other members.

§ 3.2. Powers of the Management Committee.

Subject to the terms of this Agreement, the Management Committee shall have the power to manage, operate, and develop the business of the Venture and to make all decisions with respect to the sales of advertising time on the Stations, the provision of sales and promotional support for the sale of advertising time on the Stations, and the conduct of market research and business objectives of the Venture.

§ 3.3. Meetings. Meetings of the Management Committee may be called at any time by either a Booth or Pathfinder member. The Management Committee shall meet no less frequently than quarterly. Meetings shall take place in person at the Venture's principal office, or by conference telephone or similar communications equipment by means of which all members participating in the meeting can hear and communicate with one another.

§ 3.4. Notice of Meetings.

(a) Except as provided in Subsection 3.4(b), written notice of each Management Committee meeting shall be given by the party calling the meeting to the other party, stating the place, date, and hour of the meeting and the purpose(s) of the meeting. Notice of any meeting shall be given not less than five (5) nor more than thirty (30) days before the date hereof. An affidavit of a member that the notice required by this Subsection 3.4(a) has been given, in the absence of fraud, shall be prima facie evidence of the facts therein stated. When a meeting is adjourned to another time or place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted at the meeting as originally called.

(b) Notice of a Management Committee meeting need not be given to any member who submits a signed waiver of notice, whether before or after the meeting. The attendance of any member at a meeting without protesting at the commencement of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by that member.

§ 3.5. Quorum of Members; Voting. The presence of one Booth member and one Pathfinder member shall constitute a quorum for all purposes. On any matter on which a vote is taken, a unanimous vote shall be necessary for the approval of any action.

§ 3.6. Written Consent Without a Meeting. Whenever the Management Committee is required or permitted to take any action by vote, such action may be taken without a meeting by unanimous written consent, setting forth the action so taken, signed by all members. Copies of the written consents signed by all members shall be maintained at the principal office of the Venture and shall be transmitted to all members by the member initiating the action within ten (10) days after all members have signed.

§ 3.7. Minutes. Minutes reflecting the actions taken at meetings of the Management Committee shall be kept and copies of the minutes shall be maintained at the principal office of the Venture and shall be transmitted by the record-keeper to all of the members as soon as possible after each meeting.

§ 4. Sharing of Revenue and Expenses.

§ 4.1. First Year of Operation. During the first year of operation of the Venture, Booth shall be entitled to receive from the Venture fifty percent (50%) of the Venture's gross revenue, and Booth shall be obligated to reimburse Pathfinder for fifty percent (50%) of the Venture's expenses, subject to Section 4.3 below (the "Booth Share").

§ 4.2. Second Through Fifth Years of Operation. During the second through fifth years of operation of the Venture, the Booth Share shall be determined on September 1 of each year, in accordance with the following formula:

$$\frac{(A / B) + (C / D)}{2} = \text{Booth Share}$$

Where A = WRBR "12+" Arbitron Metro Audience Share

Where B = Combined "12+" Arbitron Metro Audience Share of WLTA and WRBR

Where C = WRBR "25 - 54" Arbitron Metro Audience Share

Where D = Combined "25 - 54" Arbitron Metro Audience Share of WLTA and WRBR

§ 4.3. Revenues and Expenses. For purposes of computing revenues and expenses of the Venture, the following guidelines shall apply:

(i) Gross revenue shall equal the Venture's total collections of local, regional, national, and political accounts;

(ii) Advertising Agency Commissions shall equal actual agency commissions paid by the Venture;

(iii) Local and National Sales Commissions shall be paid at the rates set by the Management Committee;

(iv) Sales Promotion Expenses shall equal the Venture's actual sales promotion expenses, including remote broadcast expenses, as approved by the Management Committee;

(v) The Stations' network and non-broadcast revenue (e.g., tower rents, talent fees, etc.) shall not constitute revenue of the Venture;

(vi) Revenue of the Venture shall not include the dollar amount of certain trades, as provided in Section 7.5 below; and

(vii) Expenses of the Venture other than those expressly referenced in this Section shall be shared, or not shared, as agreed by the Management Committee.

§ 4.4. Disbursements of Revenues and Allocation of Expenses.

(a) Pathfinder shall pay Booth twice per month, in arrears, for the excess, if any, of Booth's Share of invoiced revenues over Booth's Share of expenses, determined in accordance with Section 4.1 through 4.3. Such payments shall be made in equal amounts, with the first payment to be made approximately fifty-five (55) days after the end of a given month (on approximately the 25th day of the second month after the month at issue) and the second payment to be made approximately seventy (70) days after the end of the given month (on approximately the 10th day of the third month after the month at issue). In other words, for example, the total amount owing for June will be paid in two equal installments, one on August 25th and one on September 10th. All payments shall be made by confirmed wire transfer, unless otherwise agreed by the Management Committee. If expenses exceed revenues by \$5000 or less in any given month, Booth's Share of those expenses shall be offset against Booth's Share of the following months' revenues. If expenses exceed revenues by more than \$5000, the first \$5000 shall be offset as above, and Booth shall reimburse Pathfinder for the amount over \$5000.

(b) During the term of this Agreement, the balance of revenues and expenses not allocable to Booth shall be the property or responsibility, as the case may be, of Pathfinder.

§ 4.5. Budgets. The Management Committee shall on an annual basis adopt annual budgets, which may be amended by agreement by the Management Committee, for each year of operations of the Venture.

§ 5. Accounting and Tax Matters.

§ 5.1. Deposit of Venture Funds. All revenues and other receipts of the Venture will be maintained on deposit in interest-bearing and non-interest bearing accounts and other investments that the Management Committee deems appropriate. Venture funds from any of the various sources mentioned above may be commingled with other Venture funds, and may be withdrawn, expended, and distributed as authorized by this Agreement. Withdrawals from any such account shall be made upon the signature of persons designated by the Management Committee.

§ 5.2. Accounting Support. Pathfinder shall provide to the Venture all internal accounting services required in connection with the conduct of the Venture's business.

§ 5.3. Books of Account and Records. Pathfinder, on behalf of the Venture, shall keep accurate books and records pertaining to the Venture which shall reflect all transactions and be appropriate and adequate for the Venture's business and for carrying out the provisions of this Agreement. The Venture's financial books and records shall be maintained by Pathfinder at its office in 421 South Second Street, Elkhart, Indiana. All such books and records shall be available for inspection and copying by the parties to this Agreement or their duly authorized representatives during ordinary business hours. Pathfinder, on behalf of the Venture, shall furnish regular and timely sales and collections reports to Booth. Booth shall have the right to audit all books, records, and reports of the Venture at its expense upon reasonable advance notice.

§ 5.4. Tax Returns and Separate Accounting of Expenses and Revenues. Each party shall separately account for its expenses and revenues attributable to the Venture and allocated to it in accordance with this Agreement, it being understood that the Venture shall not be deemed to be a partnership or any other type of separate legal entity for tax purposes. Each party shall be responsible for the preparation of its own tax returns.

§ 6. Other Business Matters.

§ 6.1. Political Advertising. Pathfinder and Booth shall each supply to the Venture such information and assistance as may be necessary to enable the Venture to comply with all rules of the Federal Communications Commission ("FCC") and other applicable laws regarding political advertising, including the lowest unit charge, equal opportunities, and reasonable access requirements. Notwithstanding Section 2.3 hereof, Pathfinder and Booth shall be allowed to sell advertising time on their respective stations for political uses under Section 315 and Section 317 of the Communications Act of 1934, as amended, directly to political candidates or their representatives if such candidates or representatives insist on dealing directly with the licensee of such station(s). Any revenues from such sales shall be included in the gross revenue of the Venture.

§ 6.2. Station Operations.

(a) Each party to this Agreement will have full authority, power, and control over the operations of any station owned by it during the term of this Agreement, and will bear full responsibility for such station's compliance with all applicable provisions of the Communications Act of 1934, as amended, the rules, regulations, and policies of the FCC, and all other applicable laws.

(b) Each party shall employ at its expense management level employees to direct all day-to-day operations of any station owned by it, except that Booth shall not be required to employ management level employees to direct its sales operations. All management level employees of a party to this Agreement shall report to and be accountable to such party exclusively. Each party will be responsible for all salaries, taxes, insurance, and related costs for all personnel employed by it and shall be solely responsible for and shall pay, in a timely fashion, all of the expenses incurred in operating any station owned by it, including rents, lease payments, utilities, and taxes.

(c) Notwithstanding any provision of this Agreement to the contrary, Booth shall retain complete control over the rate card, and shall have the right to approve, in its sole discretion, the economic terms under which any advertising, including combination advertising sold on both Stations, shall be sold on WRBR; and Pathfinder shall retain complete control over the rate card, and shall have the right to approve, in its sole discretion, the economic terms under which any advertising, including combination advertising sold on both Stations, shall be sold on WLTA.

§ 6.3. Programming and Programming Change.

Pathfinder and Booth shall each remain in complete control of the programming aired on their respective station or stations.

§ 6.4. Audience-Directed Promotions. All audience-directed promotions for WRBR will remain the responsibility of Booth; and all audience-directed promotions for WLTA will remain the responsibility of Pathfinder.

§ 7. Other Covenants and Agreements.

§ 7.1. Confidentiality. Each party shall keep confidential all information obtained by it with respect to the other party in connection with this Agreement. Upon the termination of this Agreement, each party shall return to the other, without retaining a copy thereof, any confidential

attachment, document, or other written information obtained from the other in connection with this Agreement and the transactions contemplated hereby.

§ 7.2. Cooperation. The parties shall cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions necessary with respect to, any applications, requests, or actions which are or may be necessary to obtain the consent of any governmental instrumentality, or any third party to, or are or may be necessary or helpful in order to accomplish the transactions contemplated by this Agreement.

§ 7.3. Force Majeure. Any failure or impairment of a Station's facilities or any delay or interruption in the broadcast of programs, or failure at any time to furnish facilities, in whole or in part, for broadcast, due to acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, or any other cause not reasonably within the control of the party owning the Station shall not constitute a breach of this Agreement, and no party will be liable to the other as a result of such circumstances.

§ 7.4. Notification Upon Certain Events. Each party shall give the other party: (i) sixty (60) days' written notice prior to making any major change in programming format of a Station, (ii) thirty (30) days' written notice prior to offering to sell a Station, and (iii) written notice ten (10) days after the filing of an FCC assignment or transfer application in connection with a sale of a Station.

§ 7.5. Rights Regarding Trade Agreements. Each of Pathfinder and Booth will have the right to run up to One Hundred Thousand Dollars (\$100,000) of trade on their own stations annually. The bulk of the trades will be for audience promotions. The parties will use their respective best efforts to use advertisers who are not cash paying clients of either of the Stations and to minimize the use of inventory that could otherwise be sold for cash. Trade in excess of the above figure may be authorized by the Management Committee.

§ 8. Term and Termination.

§ 8.1. Term. The term of this Agreement shall commence on the date hereof and shall continue for five (5) years thereafter, unless terminated as set forth below.

§ 8.2. Termination. This Agreement may be terminated under the following circumstances:

(a) by Pathfinder or Booth, by giving written notice of termination to the other party within ten (10) business days after receipt of written notice of a major change in programming format with respect to the other party's Station; provided that any termination pursuant to this Section 8.2(a) shall be effective on a date specified in the notice of termination, which shall be no later than the later of (i) sixty (60) days after the terminating party's receipt of the other party's notice of planned major format change, or (ii) the date on which such format change is implemented;

(b) by Pathfinder or Booth upon six (6) months' written notice to the other party, provided that the terminating party is not then in material default or breach hereof;

(c) by either Pathfinder or Booth, by giving written notice of termination to the other party, if (i) the party seeking to terminate this Agreement is not then in material breach hereof, and (ii) the other party is in material breach of its obligations hereunder and has failed to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party;

(d) by mutual consent of the parties in writing;

(e) by Pathfinder or Booth, by giving written notice of termination to the other party, if (i) this Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review; or (ii) there has been a material change in FCC rules, policies, or precedent that would cause this Agreement to be in violation thereof and such change is in effect and has not been stayed pending an appeal or further administrative review; or

(f) by Pathfinder or Booth, by giving written notice of termination to the other party within ten (10) business days after receipt of notice from the other party of the filing of an FCC assignment or transfer application in connection with a sale of WRBR or WLTA, respectively; provided that any termination pursuant to this Section 8.2(f) shall be effective upon the earlier of ninety (90) days after

receipt of notice of the filing of an FCC assignment application or the closing of the sale of a Station.

§ 9. Representations and Warranties.

§ 9.1. Representations and Warranties of Booth.

To induce Pathfinder to enter into this Agreement, Booth represents and warrants to Pathfinder as follows:

(a) Organization, Standing, and Authority.

Booth is a corporation duly organized, validly existing, and in good standing under the laws of the State of Michigan, and is qualified to conduct business in the State of Indiana. Booth has all requisite corporate power and authority (i) to own, lease, and use the assets of WRBR as presently owned, leased, and used, (ii) to conduct the business or operations of WRBR as presently conducted, and (iii) to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Booth hereunder and thereunder. Booth is not a participant in any joint venture or partnership with any other person or entity with respect to any part of the operations or assets of WRBR.

(b) Authorization and Binding Obligation.

The execution, delivery, and performance of this Agreement by Booth have been duly authorized by all necessary corporate actions on the part of Booth. This Agreement has been duly executed and delivered by Booth and constitutes the legal, valid, and binding obligation of Booth, enforceable against it in accordance with its terms except as the enforceability hereof may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, or by judicial discretion in the application of equitable remedies.

(c) Absence of Conflicting Agreements.

The execution, delivery, and performance of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of an third party; (ii) will not conflict with any provision of the Articles of Incorporation or Bylaws of Booth; (iii) will not conflict with, result in a breach of, or constitute a default under any law, judgment, order, ordinance, decree, rule, regulation, or ruling of any court or governmental instrumentality which is applicable to Booth; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Booth is a party or by which Booth is bound.

(d) Licenses. Booth owns and holds all licenses and other permits and authorizations necessary for the operation of WRBR as presently conducted and such licenses, permits, and authorizations are and will be in full force and effect. There is not now pending or, to Booth's knowledge, threatened any action by the FCC or by any other party to revoke, cancel, suspend, refuse to renew, or modify adversely any of such licenses, permits, or authorizations. Booth is not in material violation of any statute, ordinance, rule, regulation, policy, order, or decree of any federal, state or local entity, court, or authority having jurisdiction over it or WRBR which would have an adverse effect upon Booth's ability to perform this Agreement. The facilities of WRBR are and will throughout the term of this Agreement continue to be maintained in accord with good engineering practice and will comply in all material respects with the engineering requirements set forth in the FCC licenses of WRBR, including broadcasting a high quality signal to WRBR's service areas (except at such time where reduction of power is required for routine or emergency maintenance).

(e) Governmental and Regulatory Approvals. No consent or approval of or filing with any federal, state, or local governmental authority or other regulatory body is required to be made or obtained by Booth in connection with the execution, delivery, and performance of this Agreement or the consummation of the transactions contemplated herein.

(f) Litigation. There are no suits, proceedings, arbitrations, or claims or counterclaims pending or, to Booth's knowledge after due inquiry, threatened against Booth in any court or before any arbitration panel or before or by any federal, state, or other governmental department or agency which might result in any material adverse effect upon Booth, its Station, or the Venture or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement. Booth has no knowledge, after due inquiry, of any facts which might reasonably be believed to be a basis for any such suit, proceeding, arbitration, claim, or counterclaim that could have a material adverse effect on Booth. Booth is not subject to or directly or indirectly affected by any order, judgment, decree, or ruling of any court or governmental agency in the nature of any injunctive or consent order or order for specific performance which involves, relates to, or affects (or may involve, relate to or affect) Booth.

§ 9.2. Representations and Warranties of Pathfinder. To induce Booth to enter into this Agreement, Pathfinder represents and warrants to Booth as follows:

(a) Organization, Standing, and Authority. Pathfinder is a corporation duly organized, validly existing, and in good standing under the laws of the State of Indiana, and is qualified to conduct business in the State of Indiana. Pathfinder has all requisite corporate power and authority (i) to own, lease, and use the assets of WLTA as presently owned, leased, and used, (ii) to conduct the business or operations of WLTA as presently conducted, and (iii) to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Pathfinder hereunder and thereunder. Pathfinder is not a participant in any joint venture or partnership with any other person or entity with respect to any part of WLTA's operations or assets.

(b) Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Pathfinder have been duly authorized by all necessary corporate actions on the part of Pathfinder. This Agreement has been duly executed and delivered by Pathfinder and constitutes the legal, valid, and binding obligation of Pathfinder, enforceable against Pathfinder in accordance with its terms, except as the enforceability hereof may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, or by judicial discretion in the application of equitable remedies.

(c) Absence of Conflicting Agreements. The execution, delivery, and performance of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not conflict with any provision of the Articles of Incorporation or Bylaws of Pathfinder; (iii) will not conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation or ruling of any court or governmental instrumentality which is applicable to Pathfinder; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Pathfinder is a party or by which Pathfinder is bound.

(d) Licenses. Pathfinder owns and holds all licenses and other permits and authorizations necessary for

the operation of WLTA as presently conducted and such licenses, permits, and authorizations are and will be in full force and effect. There is not now pending or, to Pathfinder's knowledge, threatened any action by the FCC or by any other party to revoke, cancel, suspend, refuse to renew, or modify adversely any of such licenses, permits, or authorizations. Pathfinder is not in material violation of any statute, ordinance, rule, regulation, policy, order, or decree of any federal, state or local entity, court, or authority having jurisdiction over it or over WLTA, which would have an adverse effect upon Pathfinder's ability to perform this Agreement. The facilities of WLTA are and will throughout the term of this Agreement continue to be maintained in accordance with good engineering practice and will comply in all material respects with the engineering requirements set forth in the FCC license of WLTA, including broadcasting a high quality signal to the service area of WLTA (except at such time where reduction of power is required for routine or emergency maintenance).

(e) Governmental and Regulatory Approvals.

No consent or approval of or filing with any federal, state or local governmental authority or other regulatory body is required to be made or obtained by Pathfinder in connection with the execution, delivery, and performance of this Agreement or the consummation of the transactions contemplated herein.

(f) Litigation. There are no suits, proceedings, arbitrations, or claims or counterclaims pending or, to Pathfinder's knowledge after due inquiry, threatened against Pathfinder in any court or before any arbitration panel or before or by any federal, state, or other governmental department or agency which might result in any material adverse effect upon Pathfinder, its Station, or the Venture or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement. Pathfinder has no knowledge, after due inquiry, of any facts which might reasonably be believed to be a basis for any such suit, proceeding, arbitration, claim, or counterclaim that could have a material adverse effect on Pathfinder. Pathfinder is not subject to or directly or indirectly affected by any order, judgment, decree, or ruling of any court or governmental agency in the nature of any injunctive or consent order or order for specific performance which involves, relates to or affects (or may involve, relate to, or affect) Pathfinder.

§ 10. Indemnification; Limitation of Liability.

§ 10.1. Indemnities. Each party shall indemnify, defend and hold the other party harmless from and against any and all loss, cost, liability, damage, and expense (including reasonable attorneys' fees and costs incurred, whether on appeal or otherwise) of every kind, nature, or description, arising out of (a) the breach by such party of any representation or warranty set forth in this Agreement; or (b) the breach by such party of any of the covenants or other agreements of such party contained in or arising out of this Agreement or the transactions contemplated hereby.

§ 10.2. Agreement Challenge. If this Agreement is challenged at or by the FCC or at or by the U.S. Department of Justice or the Federal Trade Commission, whether or not in connection with a license renewal application for either of the Stations, Pathfinder and Booth, through their respective counsel, shall jointly defend the Agreement and the parties' performance thereunder throughout all such proceedings. If portions of this Agreement do not receive the approval of the FCC staff, to the extent that such approval may be required, then the parties shall use their best efforts to reform the Agreement in such a manner as to maintain the economic benefit anticipated by each party or, at Pathfinder's option and expense, seek reversal of the staff decision and approval from the FCC on appeal.

§ 10.3. Limitation of Liability. Notwithstanding any other provision contained herein, neither party shall be liable, responsible or accountable in damages or otherwise to the other party for any breach or default of the provisions of Subsection 2.5 and Section 3 hereof (the "Joint Management Provisions"), it being understood and agreed the sole and exclusive remedy of the parties hereto for any breach of any of the Joint Management Provisions shall be the termination of this Agreement pursuant to the provisions of Section 8.2(c) hereof promptly after the terminating party knew or should have known of the facts or circumstances constituting the alleged breach or default. The failure of any party to so terminate this Agreement shall constitute a waiver by that party of any breach of the Joint Management Provisions.

§ 11. Arbitration. Except as provided in Section 10.3 hereof, any dispute between Pathfinder and Booth arising out of or related to this Agreement that the parties are unable to resolve by themselves shall be settled by arbitration in South Bend, Indiana by a panel of three arbitrators. Pathfinder and Booth shall each designate one disinterested arbitrator and the two arbitrators designed shall select the third arbitrator. The persons selected as arbitrators need

not be professional arbitrators, and persons such as lawyers, accountants and bankers shall be acceptable. Before undertaking to resolve a dispute, each arbitrator shall be duly sworn faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of his or her understanding. The arbitration hearing shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The written decision of a majority of the arbitrators shall be final and binding on Pathfinder and Booth. The costs and expenses of the arbitration proceeding shall be assessed between Pathfinder and Booth in a manner to be decided by a majority of the arbitrators, and the assessment shall be set forth in the decision and award of the arbitrators. Judgment on the award, if it is not paid within thirty days, may be entered in any court having jurisdiction over the matter. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by Pathfinder or Booth against the other except (a) an action to compel arbitration pursuant to this Section or (b) an action to enforce the award of the arbitration panel rendered in accordance with this Section.

§ 12. Miscellaneous.

§ 12.1. Captions. All section or paragraph captions contained in this Agreement are for convenience only and shall not be deemed part of this Agreement.

§ 12.2. Pronouns, Singular and Plural Form. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, and neuter as the identity of the person or persons referred to may require, and all words shall include the singular or plural as the context or the identity of persons may require.

§ 12.3. Further Assurances. The parties shall execute and deliver all documents, provide all information, and take, or forbear from, all actions that may be necessary or appropriate to achieve the purposes of this Agreement.

§ 12.4. Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter of this Agreement.

§ 12.5. Assignment. This Agreement may not be assigned, transferred, pledged, or otherwise disposed of, in whole or in part, by either party hereto without the prior written consent of the other party, and any attempt to do so without such consent shall be null and void. Notwithstanding

the foregoing, each party agrees, subject to other party's termination rights under Section 8.2(f), to cause any purchaser of a Station owned by it to assume the obligations and liabilities of such party under this Agreement with respect to that station, and the assignment of this Agreement to such purchaser shall not be prohibited.

§ 12.6. Agreement Binding. This Agreement shall be binding upon the heirs, executors, guardians, administrators, successors, and assigns of the parties. No provision of this Agreement may be waived except by a written instrument specifically waiving such provision and executed by the party to be charged with such waiver. No provision of this Agreement may be amended or modified except by a written instrument executed by all of the parties.

§ 12.7. Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly delivered and received (a) on the date of personal delivery or (b) on the date of receipt (as shown on the return receipt) if mailed by registered or certified mail, postage prepaid and return receipt requested, or if sent by Federal Express or similar courier service, with all charges prepaid. All such notices, demands, and requests shall be addressed as follows:

If to Booth: Mr. John L. Booth, II
Booth American Company
333 W. Fort Street
Detroit, Michigan 48226

With a copy to: John C. Quale, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

If to Pathfinder: Mr. John F. Dille, III
Pathfinder Communications
421 South Second Street
Elkhart, Indiana 46514

With a copy to: Alan C. Campbell, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20037

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this Section 12.7. Nothing in this Section shall preclude the delivery of notices by

appropriate means other than those described above, including facsimile.

§ 12.8. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana (without regard to the choice of law provisions thereof).

§ 12.9. No Third-Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, create any right enforceable by any person not a party hereto, including any creditor of the Venture or of either of the parties.

§ 12.10. Counterparts. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PATHFINDER COMMUNICATIONS
CORPORATION

By: 

Name: John F. Dille III

Title: President

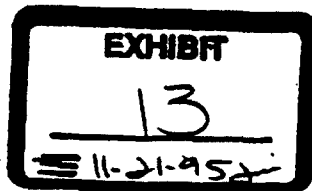
BOOTH AMERICAN COMPANY

By: 

Name: John L. Booth, II

Title: President-Secretary

- GSM / GM



Start: Aug 30th
→ Bob ~~Gandy~~ Gandy
8/17/93 WLF B
Don White

NOTE TO JOHN BOOTH

RE: WRBR

FROM: JOHN DILLE

As we have discussed, Dave Hicks, a broadcaster in Kalamazoo, has indicated his intent to become the controlling interest in an entity that would acquire WRBR. As we have also discussed my three children would each hold a third of minority shares.

They would have an arrangement-option-agreement to purchase from Hicks his shares when and if that became possible. Their ages are 26, 25 and 20.

It would be prudent for NEWCO to have a JOA or some kind of selling agreement with someone. Clearly WLTA would be the likely choice. And that agreement would have a element of risk within it so as to ensure careful attention to the obligations of the business as well as the license. These things together should provide for an "arm's length" agreement.

The above along with the de minimis nature of the encroachment upon the rules should make any request, if necessary, for a waiver fairly straightforward. Perhaps such a waiver is not a slam dunk, but relative to Bakersfield it ought to be quite "doable".

Clearly, we would like to proceed. We see it as a reasonable business deal and a help to both stations as they position for the future. Whatever that means!

On a personal note, three weeks ago our youngest son went on the air as a summer, weekend, overnight jock on our AM country station in Fort Wayne. It was for some of us, and for different reasons, an emotional moment. I needn't supply the details.

He will return to the campus in a few weeks, but the experience reaffirms my desire to provide for our people the best possible opportunity to survive in this business in our home area. It is important.

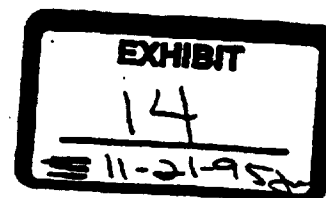
By now you should have some kind of document from Alan Campbell regarding the governance of NEWCO that will furnish what we need to proceed.

Best personal regards,

46

Attachment 2

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Attachment
3**IRWIN CAMPBELL & CROWE**ATTORNEYS AT LAW
180 EIGHTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20006
(202) 728-6800
FAX (202) 728-6394**MEMORANDUM**

TO: John Quale

FROM: Alan Campbell *AC*

DATE: August 17, 1993

RE: Station WRBR(FM), South Bend, Indiana

As we discussed, this will outline the parameters of the proposal for the acquisition of WRBR-FM, South Bend, Indiana by Newco.

As you are aware from our earlier discussions, the acquisition of the station by an entity controlled by John F. Dille, III ("Dille, III") would require a waiver of the Commission's one-to-a-market provisions of the multiple ownership rules. The 1 mv/m contour of WRBR encompasses all of Elkhart, Indiana. Dille, III has an attributable interest in Truth Publishing Company, Inc. ("Truth") which publishes a daily newspaper in Elkhart. Section 73.3555(c)(2) prohibits Dille III from having attributable interests in Truth and in WRBR without first obtaining a waiver.

As proposed herein, a new entity, Newco, would be formed to acquire WRBR. There would be a single individual majority shareholder who is not related to Dille, III. The majority shareholder is an experienced radio broadcaster who has no interests in the South Bend or Elkhart markets. The minority shareholders would be the three adult children of Dille, III (ages 26, 25 and 19). The three children do not have attributable interests in Truth (each has a .004% ownership interest in Truth), and because there is a single majority shareholder in Newco, they would not have attributable ownership interests in Newco (and if they were not officers or directors of Newco, they would not have attributable interests of any nature in Newco). Dille, III would not have any interest - attributable or nonattributable - in Newco. We do not think that this acquisition would require a waiver of the multiple ownership rules.

At most, the assignment application may have to address the Commission's less defined "cross interest policy" which still applies to some ownership structures. Although the cross interest policy may apply to situations in which there is a meaningful interest in a daily newspaper and a broadcast station, we do not think that is the situation here. The children are not officers, directors or involved in the operation of Truth. Nevertheless, I think that the assignment application should be candid about Dille III's ownership interests and reveal the existing JOA between WRBR and WLTA(FM), Elkhart, Indiana.

cc Mr. John F. Dille, III

Robert A. Watson
Secretary - Treasurer

Attachment 4

November 30, 1993

Pathfinder Communications Corp.
WCKY/WIMJ, Cincinnati
WTRC/WLTA, Elkhart/South
WOHK-AM/FM, Fort Wayne
WMEE, Fort Wayne
WCUZ-AM/FM, Grand Rapids
WQWQ, Muskegon
BANNER GRAPHIC, Greenac
Truth Publishing Company, Inc.
THE ELKHART TRUTH
KOLL-AM/FM, Tulsa

P.O. Box 2500
Elkhart, Indiana 46515
Telephone (219) 294-1661
FAX (219) 294-4014

Federated Media



Alec C. Dille
2700 N. Hayden, Apt. 1104
Scottsdale, Arizona 85257

Subject: Escrow Deposit for Proposed Purchase of WRBR Radio

Dear Alec:

Attached is the deposit receipt showing that \$8,166.67 was deposited in your account on November 26, 1993. On that same day, a check for a like amount was written on your account to the escrow agent, Honigman Miller Schwartz & Cohn (copy of check attached).

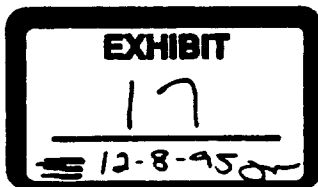
If you have any questions, please call me.

Sincerely,

Robert A. Watson
Secretary-Treasurer

RAW/md

Attachments



BB

Robert A. Watson
Secretary Treasurer

November 30, 1993

Pathfinder Communications Corp.
WCKY/WMLJ, Cincinnati
WTRC/WLTA, Elkhart/South B
WOHK-AM/FM, Fort Wayne
WMEE, Fort Wayne
WCUZ-AM/FM, Grand Rapids
WQWO, Muskegon
BANNER GRAPHIC, Greencastle
Truth Publishing Company, Inc.
THE ELKHART TRUTH
KOLL-AM/FM, Tulsa

P.O. Box 2500
Elkhart, Indiana 46515
Telephone (219) 294-1661
FAX (219) 294-4014

Federated Media

CONFIDENTIAL



J. Flint Dille
1902 E. Jackson Blvd.
Elkhart, Indiana 46516

Subject: Escrow Deposit for Proposed Purchase of WRBR Radio

Dear Flint:

Attached is the deposit receipt showing that \$8,166.67 was deposited in your account on November 26, 1993. On that same day, a check for a like amount was written on your account to the escrow agent, Honigman Miller Schwartz & Cohn (copy of check attached).

If you have any questions, please call me.

Sincerely,

Robert A. Watson
Secretary-Treasurer

RAW/md

Attachments

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Robert A. Watson
Secretary - Treasurer

November 30, 1993

Pathfinder Communications Corp.
WCKY/WIMJ, Cincinnati
WTRC/WLTA, Elkhart/South Bend
WQHK-AM/FM, Fort Wayne
WMEE, Fort Wayne
WCUZ-AM/FM, Grand Rapids
WQWQ, Muskegon
BANNER GRAPHIC, Greensburg
Truth Publishing Company, Inc.
THE ELKHART TRUTH
KOLL-AM/FM, Tulsa

P.O. Box 2500
Elkhart, Indiana 46515
Telephone (219) 294-1661
FAX (219) 294-4014

Federated Media



Mrs. Sarah D. Dunkel
1736 Lawndale Road
Elkhart, Indiana 46514

Subject: Escrow Deposit for Proposed Purchase of WRBR Radio

Dear Sarah:

Attached is the deposit receipt showing that \$8,166.66 was deposited in your account on November 26, 1993. On that same day, a check for a like amount was written on your account to the escrow agent, Honigman Miller Schwartz & Cohn (copy of check attached).

If you have any questions, please call me.

Sincerely,

Robert A. Watson
Secretary-Treasurer

RAW/md

Attachments

35


JOHN A. DUNKEL 1-93
SARAH D. DUNKEL
PH. 219-264-1683
1736 LAWNDALE RD.
ELKHART, IN 46514

2286

Nov. 18 1993 71-115/712


PAY TO THE ORDER OF HONIGMAN MILLER SCHWARTZ & COHN \$ 8,166.67*

Eight Thousand One Hundred Sixty-six and 67/100 DOLLARS

 NBD Bank
Elkhart Office - 707
Elkhart, Indiana 46516

MEMO Escrow Deposit Sarah D. Dunkel

⑆071201155⑆ 379 228 5# 2286

 ALEC C. DILLE
PH. 219-264-9972
23840 GREENLEAF BLVD.
ELKHART, IN 46514


186

Nov. 26, 1993 71-114/712

PAY TO THE ORDER OF HONIGMAN MILLER SCHWARTZ & COHN \$ 8,166.67*


Eight Thousand One Hundred Sixty-six and 67/100 DOLLARS

Ameritrust National Bank
Michiana
Elkhart, IN

 Ameritrust

MEMO Escrow Deposit

⑆071201142⑆ 92110-4658# 0186


 DR. J. FLINT DILLE 7-83
1902 E JACKSON PH 219-294-1127
ELKHART, IN 46516

539

Nov. 26, 1993 71-9088/2712
BRANCH 1

PAY TO THE ORDER OF HONIGMAN MILLER SCHWARTZ & COHN \$ 8,166.66*

Eight Thousand One Hundred Sixty-six and 66/100 DOLLARS

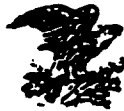
 MLES
Federal
Credit
Union Elkhart, IN 46516

FOR Escrow Deposit J. Flint Dille

⑆27129068⑆ 80004962# 0539

36

DEPOSIT TICKET



ALEC C. DILLE
PH. 219-284-9972
23840 GREENLEAF BLVD.
ELKHART, IN 46514

DATE 11-26 19 93
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

ACKNOWLEDGE RECEIPT OF CASH RETURNED BY SIGNING ABOVE.

Ameritrust National Bank
Michiana
Elkhart, IN



CASH	
INITIALS ONLY	8,000.00
	166.67
TOTAL FROM OTHER SIDE	
TOTAL	8,166.67
LESS CASH RECEIVED	-
NET DEPOSIT	8,166.67

71-114/712
USE OTHER SIDE
ADDITIONAL
BE SURE EACH IS
PROPERLY ENOC

10712011421 9211014658 25

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREED

204

JOHN F. DILLE, III
23840 GREENLEAF BLVD.
ELKHART, IND. 46514

10/15 19 93 71-114/712

PAY TO THE ORDER OF Alec C. Dille \$ 8,200.00

Eight thousand dollars and 00/100 DOLLARS

Ameritrust National Bank
Michiana
Elkhart, IN

Ameritrust

MEMO A GIFT 46-2-206-

10712011421 3211010016 0204

208

JOHN F. DILLE, III
23840 GREENLEAF BLVD.
ELKHART, IND. 46514

11/15 19 93 71-114/712

PAY TO THE ORDER OF Alec C. Dille \$ 166.67

One hundred and sixty-six dollars and 67/100 DOLLARS

Ameritrust National Bank
Michiana
Elkhart, IN

Ameritrust

MEMO 26-2-206-

10712011421 3211010016 0208

211

DEPOSIT TICKET

JOHN A. DUNKEL 1-93
SARAH D. DUNKEL
PH. 219-264-1683
1738 LAWNDALE RD.
ELKHART, IN 46514

DATE 11-26 1992
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

MARK HERE FOR CASH RECEIVED IF REQUIRED



NBD Bank
Elkhart Office - 707
Elkhart, Indiana 46514

CASH	CURRENCY
	COIN
50	8,000.00
20	166.66
TOTAL FROM OTHER SIDE	
TOTAL	8,166.66
LESS CASH RECEIVED	-
NET DEPOSIT	8,166.66

71-1157

USE OTHER ADDITIONAL

BE SURE EAL PROPERLY

⑆07⑆20⑆⑆55⑆ 379 228 5⑈ 125

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION LAW

206

JOHN F. DILLE, III
23840 GREENLEAF BLVD.
ELKHART, IND. 46514

11/15 1993 71-1147

PAY TO THE ORDER OF Sarah Dunkel \$ 166.66

One hundred ~~thirty~~ and sixty six dollars and 66/100

Ameritrust National Bank
Michigan
Elkhart, IN

Ameritrust

MEMO 26-7-26-

⑆07⑆20⑆⑆42⑆ 32⑆⑆0⑆00⑆⑆ 0206

202

JOHN F. DILLE, III
23840 GREENLEAF BLVD.
ELKHART, IND. 46514

10/15 1993 71-1147

PAY TO THE ORDER OF Sarah Dunkel \$ 8,000.00

Eight thousand dollars and 00/100 DOLLARS

Ameritrust National Bank
Michigan
Elkhart, IN

Ameritrust

MEMO GIFT 26-7-26-

⑆07⑆20⑆⑆42⑆ 32⑆⑆0⑆00⑆⑆ 0202

BB



DR. J. FLINT DILLE 7-93
1902 E JACKSON PH 219-2941
ELKHART, IN 46516

DATE 11-26-93
CHECKS AND OTHER FUNDS ARE RECEIVED FOR DEPOSIT BLANK TO THE 15TH AND 20TH DAYS OF THE MONTH AS NOTED ON ACCOUNT STATEMENT. DEPOSITS MAY NOT BE AVAILABLE FOR WITHDRAWAL IMMEDIATELY.

SIGN HERE ONLY IF CASH RECEIVED FROM DEPOSIT

MILES Federal
Credit
Union Elkhart, IN 46516

CURRENCY		
COIN		
C	10 DOLLARS	
C	5 DOLLARS	
C	1 DOLLAR	8,000.00
C	50 CENTS	166.67
TOTAL FROM OTHER SIDE		
SUB-TOTAL		8,166.67
TOTAL	LESS CASH RECEIVED	-
TOTAL DEPOSIT		8,166.67

11-90887
BRANCH

DEPOSIT
TICKET
PLEASE RETURN
ADDITIONAL
CHECKS ON
REVERSE
SIDE

1:271290681:

800049679H

CHAMBERS 1993

201

JOHN F. DILLE, III
23840 GREENLEAF BLVD.
ELKHART, IN. 46514

14/15 1993 71-1147

PAY TO THE ORDER OF John F. Dille IV \$ 166.67

One hundred and sixty-six dollars and 67/100 DOLLARS

Ameritrust National Bank
Michigan
Elkhart, IN

Ameritrust

MEMO John F. Dille IV

1:0712011421: 3211000016R 0207

201

JOHN F. DILLE, III
23840 GREENLEAF BLVD.
ELKHART, IN. 46514

10/15 1993 71-1147

PAY TO THE ORDER OF John F. Dille IV \$ 8,000.00

Eight thousand dollars and 00/100 DOLLARS

Ameritrust National Bank
Michigan
Elkhart, IN

Ameritrust

MEMO GIFT

1:0712011421: 3211000016R 0203

JP

Attachment 5

February 22, 1994

Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Subject: Station WRBR(FM), South Bend, Indiana - BALH-931222GE

Gentlemen:

- I am the father of Sarah D. Dunkel, Alec C. Dille and John F. Dille IV. I am aware that they are each proposing an ownership interest of 16.33% in Hicks Broadcasting of Indiana, L.L.C., which is proposing to acquire the above-captioned station. This is to advise the Commission that I, nor my father, John F. Dille, Jr., will finance or guarantee the purchase of the station by Hicks Broadcasting. Moreover, upon acquisition of the station by Hicks Broadcasting, neither I, nor my father, will be involved in the day-to-day operation of the station.

Respectfully submitted,


John F. Dille III

40

Attachment 6

IRWIN, CAMPBELL & CROWE, P.C.

ATTORNEYS AT LAW
1320 EIGHTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 728-0800
FAX (202) 728-0354

ALAN C. CAMPBELL
(202) 728-0803

February 17, 1994

Via Facsimile

Mr. David L. Hicks
4154 Jennings Drive
P.O. Box 50911
Kalamazoo, MI 49005-0911

Re: WRBR

Dear Dave:

The individual at the Commission processing the WRBR assignment application has asked for two pieces of information in the form of amendments.

First, he wants a copy of the Noncompetition Agreement which is Exhibit 2.3(a)(6) to the Purchase Agreement. An amendment form to take care of this is attached for your review. If it is ok, please sign the fax copy and return the original to me.

Second, the staff wants a statement from John Dille and his father that they will not be involved in the day-to-day operation of WRBR and will not participate in the financing of the purchase of the station for John's children. I have sent a statement to John and his father to sign. In order to file this statement, we will need a second covering amendment signed by you. Please hold on to this second covering amendment, so that your signature is dated after John and his father have signed their joint statement and it is sent to you.

Please call me if you have any questions. The application should be ready for final review as soon as we file both amendments.

Cordially yours,



Alan C. Campbell

Encs
cc/enc Mr. Robert A. Watson

David L. Hicks
Kalamazoo, Michigan

March 31, 1994

Ms. Sarah F. Dunkel
Mr. Alec C. Dille
Mr. John F. Dille, IV
c/o 421 S. Second Street
P.O. Box 2500
Elkhart, Indiana 46515

Dear Sarah, Alec and John:

This letter will set forth certain terms regarding our relationship as members of Hicks Broadcasting of Indiana, L.L.C., an Indiana Limited Liability Company (the "Company"), the purchaser of Radio Station WRBR from Booth American Company ("Booth").

1. Capital Contribution. We have agreed that the capital of the Company will be as follows:

<u>Member</u>	<u>Dollar Amount</u>	<u>Membership Interests (Percentage)</u>
Alec C. Dille	\$163.34	16.34%
John F. Dille, IV	\$163.33	16.33%
Sarah F. Dunkel	\$163.33	16.33%
David L. Hicks	<u>\$510.00</u>	51.00%

2. Put Provision. On and after 3 years from the date of this letter, this will confirm that I may, at any time, require each of you, jointly and severally, to purchase all my interest in the Company by giving written notice of my election to do so (the "Put Option"). The purchase price and terms for my interest, pursuant to the Put Option, is as set forth under Section 7.4(b) of the Operating Agreement of the Company, including the minimum purchase price of \$100,000.

3. Indemnification and Contribution. Each of you, jointly and severally, agree to indemnify and hold me harmless from any costs, losses, claims, liabilities, fines, expenses, penalties and damages (including reasonable legal fees) in connection with or resulting from the Letter of Credit given by me to Booth as part of the purchase documents regarding the purchase of Radio Station WRBR.

42

Ms. Sarah F. Dunkel
Mr. Alec C. Dille
Mr. John F. Dille, IV

2

March 30, 1994

With respect to our Guaranty to Booth given to secure the Promissory Note of the Company to Booth, in the event Booth demands payment pursuant to such Guaranty, each of you agree to first pay on the Guaranty to the full amount of your obligation thereunder before I am required to pay any amount on the Guaranty. You agree that I have a right of contribution from each of you to enforce this provision.

To the extent necessary, this letter agreement shall constitute an operating agreement under Indiana law. In the event any terms of this letter agreement are in conflict with the terms of the Operating Agreement for the Company, this letter agreement shall control.

If the terms of this letter agreement correctly set forth the terms of our understanding, please sign where indicated below.

Sincerely,



David L. Hicks

Accepted and agreed to by:

March 31, 1994

Sarah F. Dunkel

March 31, 1994

Alec C. Dille

March 31, 1994

John F. Dille, IV

KZFS1\102975.1-040363-00002

43

Attachment 8

P O Box 437
Elkhart, Indiana 46515
219 294-1561

March 23, 1994

PATHFINDER COMMUNICATIONS CORPORATION

Mr. David L. Hicks
7463 Cottage Oak Drive
Portage, Michigan 49002

Dear Dave:

Pathfinder Communications Corporation will perform all accounting functions for Hicks Broadcasting of Indiana L.L.C. This includes general accounting, accounts payable, preparation of payroll checks and proper payment and accounting for related withholding taxes, issuance of financial statements on a monthly basis and filing of required government reports relating to any accounting records for which we maintain.

For such services, Hicks Broadcasting of Indiana L.L.C. agrees to pay Pathfinder Communications Corporation \$705.00 each month. Such fee is subject to review and revision each January 1. Either party may terminate this agreement by providing the other with 60 days written notice.

Please indicate your acceptance of this agreement by signing below.

Very truly yours,



Robert A. Watson
Secretary-Treasurer

RAW/md

Hicks Broadcasting of Indiana, L.L.C. agrees to the above arrangement.



David L. Hicks, Member

3/23/94

Date

Attachment 9

P.O. Box 467
Elkhart, Indiana 46515
219 294-1661

December 29, 1995

**PATHFINDER
COMMUNICATIONS
CORPORATION**

Mr. David L. Hicks
7463 Cottage Oak Drive
Portage, Michigan 49002

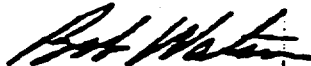
Dear Dave:

As you are aware, Hicks Broadcasting of Indiana, L.L.C. ("Hicks") is currently paying Pathfinder Communications Corporation a monthly accounting fee of \$705.00 in accordance with our Agreement dated March 23, 1994 (copy attached). Starting January 1, 1996, we propose the fee to be \$1,000 per month.

Please indicate your acceptance and agreement with this monthly fee by signing and dating below and returning this letter to me.

If you have any questions, please call me.

Sincerely,



Robert A. Watson
Secretary-Treasurer

RAW/md

Accepted By:



David L. Hicks

12/29/95

Date

45

MEMO

TO: J. Flint Dille

DATE: March 20, 1995

Another payment will soon be due on Hicks Broadcasting of Indiana's Note Payable to Booth American for WRBR Radio. As in the previous month, attached is your father's check which you should deposit in your account. Please write a check on your account made payable to Hicks Broadcasting of Indiana, L.L.C. and mail it to me in the enclosed self-addressed, stamped envelope by no later than March 24th.

If you have any questions, please call me.



Bob Watson

RAW/md

Attachments

46

Handwritten notes and date: 3-24-95

MEMO

TO: Alec Dille

DATE: March 20, 1995

Another payment will soon be due on Hicks Broadcasting of Indiana's Note Payable to Booth American for WRBR Radio. As in the previous month, attached is your father's check which you should deposit in your account. Please write a check on your account made payable to Hicks Broadcasting of Indiana, L.L.C. and mail it to me in the enclosed self-addressed, stamped envelope by no later than March 24th.

If you have any questions, please contact me.



Bob Watson

RAW/md

Attachments

HM

Recd 30-75

MEMO

TO: Sarah Dunkel

DATE: March 20, 1995

Another payment will soon be due on Hicks Broadcasting of Indiana's Note Payable to Booth American for WRBR Radio. As in the previous month, attached is your father's check which you should deposit in your account. Please write a check on your account made payable to Hicks Broadcasting of Indiana, L.L.C. and mail it to me in the enclosed self-addressed, stamped envelope by no later than March 24th.

If you have any questions, please call me.



Bob Watson

RAW/md

Attachments

P.S. We are returning the blank check you gave us (which was filled out in the wrong amount); this check has been voided. Please write us another check from your account in the amount of \$35,000.00 and return to me as instructed above.

Recd
3-23-95

HB

IRWIN, CAMPBELL & TANNENWALD, P.C.

ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20036
(202) 728-0400
FAX (202) 728-0354

PETER TANNENWALD
(202) 728-0401 Ext. 105

COPY

April 3, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: WNDU-AM-FM, South Bend, Indiana
Applications for Assignment of License
File Nos. BAL-960809GQ & BALH-960809GR

Stop Code: 1800B2-WD

Dear Mr. Caton:

Transmitted herewith in triplicate and filed on behalf of Pathfinder Communications Corporation as an amendment to the above-referenced applications is a response to the Commission's Letter of Inquiry dated March 14, 1997. The filing consists of the covering Amendment executed by John F. Dille, III; the Response of Pathfinder Communications Corporation; the Response of Hicks Broadcasting of Indiana, L.L.C.; and supporting declarations of John F. Dille, III, David L. Hicks, Robert A. Watson and Alan C. Campbell.

Should you have any questions concerning the amendment, please contact the undersigned.

Very truly yours,



Peter Tannenwald

Enclosures

cc (w/encs): Stuart B. Bedell, Esquire
Linda Blair, Chief
William H. Crispin, Esquire
Christopher J. Reynolds, Esquire

241

PATHFINDER COMMUNICATIONS CORP.
421 South Second Street
Elkhart, IN 46516

April 3, 1997

Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: WNDU-AM-FM, South Bend, Indiana
Applications for Assignment of License
File Nos. BAL-960809GQ & BALH-960809GR
Stop Code: 1800B2-WD

Dear Sir or Madam:

Please amend the above referenced applications to include the attached Response of Pathfinder Communications Corp. and supporting documentation and the Response of Hicks Broadcasting of Indiana, L.L.C. and supporting documentation in response to the Commission's Letter of Inquiry dated March 14, 1997.

Respectfully submitted,

461-27-216 -

John F. Dille, III, President
Pathfinder Communications Corporation.

Response of Pathfinder Communications Corporation

The following Response of Pathfinder Communications Corporation ("Pathfinder") is provided to the Letter of Inquiry dated March 14, 1997. For convenience, the questions from the Commission are set forth below.

1. **Did Mr. Hicks provide any portion of the six \$5,000 payments that were made to Booth American for the purchase of WRBR between October 1994 and March 1995? If so, was Mr. Dille or Pathfinder the source of any of those funds? Specify amounts paid and provide copies of checks to support your responses.**

Yes; David L. Hicks ("Hicks"), the President, CEO and 51% voting member of Hicks Broadcasting of Indiana, L.L.C. ("Hicks Broadcasting LLC"), provided his pro rata (51%) share, or \$2,550.00, of each of the six \$5,000.00 payments made to Booth American Company ("Booth American") between September 1994 (for the payment due October 1, 1994) and March 1995 for the purchase of the station. Neither John F. Dille, III ("John Dille") nor Pathfinder were the source of any of Hicks' funds. Personal checks from Hicks in the amount of \$2,550.00 were deposited in Pathfinder's checking account and credited to the Hicks Broadcasting LLC account,^{1/} and the corresponding payments were made to Booth American, as follows:

<u>Date Hicks' Check^{2/} Deposited by Pathfinder</u>	<u>Amount of Check</u>	<u>Date of Payment to Booth American</u>
10/3/94	\$2550.00	9/29/94
10/26/94	\$2550.00	10/26/94
11/7/94	\$2550.00	11/23/94

^{1/} Pathfinder performs certain accounting and related functions for Hicks Broadcasting LLC pursuant to a letter agreement dated March 23, 1994 as discussed more fully herein in response to Question 9. See Exhibits 9A and 9B. Briefly, Pathfinder accomplishes this accounting function using a common bank account for Pathfinder and Hicks Broadcasting LLC, among other entities, but with matters related to Hicks Broadcasting LLC maintained separately from matters related to Pathfinder or other entities using common accounting methods. Accordingly, every time funds attributable to Hicks Broadcasting LLC are deposited in or disbursements on behalf of Hicks Broadcasting LLC are paid from the common bank account, an accounting entry is made to reflect the increase or decrease in the portion of the funds in the common bank account which are attributable to Hicks Broadcasting LLC. Checks issued by Pathfinder pursuant to this arrangement from the common bank account for matters relating to Hicks Broadcasting LLC are stamped "Hicks Broadcasting of Indiana L.L.C./dba WRBR Radio."

^{2/} Copies of Hicks' six checks are attached hereto as Exhibit 1.

12/29/94	\$2550.00	12/21/94
1/31/95	\$2550.00	1/25/95
2/28/95	\$2550.00	2/22/95

2. **How is the statement that Mr. Dille would not finance the purchase of WRBR by Hicks Broadcasting consistent with the fact that he was the source of virtually all of the funds that Hicks Broadcasting used between November 1993 and March 1995 to pay Booth American for the purchase of WRBR?**

John Dille provided no funds to Hicks Broadcasting LLC and made no payments to Booth American for the purchase of the station, and has no understanding, agreement or obligation to do so. John Dille did loan funds to his children, which they, in turn, used to make their pro rata deposits with the escrow agent, to purchase their pro rata shares of paid in capital to Hicks Broadcasting LLC and to make loans to the company.

All funds used by Hicks Broadcasting LLC between November 1993 and March 1995 for the purchase of the station from Booth American were provided directly to the Company by the members of Hicks Broadcasting LLC. The first payment due and made to Booth American was for \$5,000.00, which was due by October 1, 1994 and was actually paid on September 29, 1994, followed by five similar payments each month through the payment due on March 1, 1995, which was paid on February 22, 1995. As discussed in response to Question 1, Hicks paid his pro rata (51%) share, or \$2,550.00, of each of the six \$5,000.00 payments made to Booth American between September 1994 and March 1995 for the purchase of the station.

The balance of each of the six \$5,000.00 payments, or \$2,450.00, was paid by John Dille's children, Alec C. Dille ("Alec"), Sarah F. Dille^{3/} ("Sarah") and John F. Dille, IV ("Flint" and collectively with Alec and Sarah the "Dille Children"), on an approximately pro rata (16.33% each) basis, by personal checks from Alec, Sarah and Flint which were credited to the Hicks Broadcasting LLC account, in amounts of approximately \$816.67 each.^{4/}

Prior to October 1, 1994, when the first note payment became due to Booth American, the only funds contributed by Hicks, Alec, Sarah or Flint related to the \$50,000.00 escrow that was required with the execution of the Asset Purchase Agreement ("APA") for the purchase of the station from Booth American, on or about November 30, 1993. Since Hicks Broadcasting LLC

^{3/} Sarah F. Dille is Sarah's maiden name; at the beginning of this transaction her married name was Sarah D. Dunkel, and her current name due to a subsequent marriage is Sarah Erlacher.

^{4/} Sarah Dille actually paid the \$816.44 share of her brother Flint's contribution of the \$5,000.00 payment made to Booth American on November 23, 1994.

had not yet been formed, and would not be formed until immediately prior to the March 31, 1994 closing on the purchase of the station, each of the members (Hicks, Alec, Sarah and Flint) contributed their respective pro rata shares of the \$50,000.00 escrow amount.

Hicks contributed his pro rata (51%) share, or \$25,500.00, in the form of an irrevocable standby letter of credit issued December 1, 1993, by Michigan National Bank, as discussed more fully herein in response to Question 5. This letter of credit remained in effect after the closing on March 31, 1994, and was not released by Booth American until the note payment of \$105,000 to Booth American due on April 1, 1995. After the \$105,000.00 payment was made to Booth American, the letter of credit was cancelled.

Alec, Sarah and Flint each delivered personal checks in the amount of approximately \$8,166.67 payable to Honigman, Miller, Schwartz & Cohn, counsel to Booth American, as escrow agent representing their share of the escrow deposit. Since there was no default under the APA, at the March 31, 1994 closing on the purchase of WRBR by Hicks Broadcasting LLC this \$24,500.00 cash escrow deposit was returned in full in the form of a check from the Honigman law firm payable to Hicks Broadcasting LLC. The \$24,500.00 check was deposited to the credit of the newly-formed Hicks Broadcasting LLC in anticipation of the purchase of certain new equipment for the station, and was booked as an \$8,000.00 member loan and an approximately \$166.67 capital contribution in favor of each of Alec, Sarah and Flint.

The note to Booth American required a payment of \$105,000.00 on April 1, 1995 and the funds for this payment by Hicks Broadcasting LLC were provided in the form of member loans, each in the amount of \$35,000.00 from Alec, Sarah and Flint.^{5/} As part of the negotiation process, Booth American had demanded this lump-sum payment in consideration for the moratorium on monthly note payments during the following twelve months. At the time this lump-sum payment was due to Booth American, Dave Hicks was engaged in litigation in Kalamazoo, Michigan involving his merger partners in another deal, litigation that remains ongoing, and was unable to comfortably make a pro rata share of a loan to the company. The Dille Children felt that their loans to Hicks Broadcasting LLC would be short term since WRBR's financial performance was improving. (For example, as explained in the response to Question 8, WRBR showed a positive operating balance in March 1995 of approximately \$20,000.00.) This anticipation was well-founded, since Hicks Broadcasting LLC was able to repay these loans to the Dille Children, plus earlier loans by them, by the end of 1995.

^{5/} These loans were initially recorded as paid in capital on the books of Hicks Broadcasting LLC, but were reclassified as loans during year-end accounting adjustments in December 1995.

3. **In Pathfinder's Consolidated Opposition to Informal Objection filed November 15, 1996 ("Opposition"), Pathfinder states that Dille's statement that he would not finance the purchase of WRBR is "literally" correct because Booth American was providing seller financing. Was Mr. Dille aware that the staff requested a statement that he would not "participate in the financing of the purchase of the station for [his] children"?**

As detailed more completely in Pathfinder's Opposition, John Dille and Pathfinder were initially contacted by Booth American in the summer of 1992 concerning the establishment of a joint sales agreement ("JSA") between WRBR(FM), licensed to Booth American, and WBYT(FM) (WLTA at the time), licensed to Pathfinder. The JSA between WRBR and WBYT was dated December 18, 1992.

For its own business reasons, Booth American decided to sell WRBR in the spring of 1993. Among other potential buyers, John Dille was contacted by Booth American to determine his interest in acquiring WRBR. John Dille was interested in purchasing WRBR and discussed a possible deal with one of Pathfinder's communications attorneys, Alan C. Campbell ("Campbell"). In discussions with Campbell, it was determined that it would be necessary for Pathfinder to obtain a waiver of the Commission's newspaper-radio cross-ownership rule in order to acquire WRBR. In consultation with communications counsel for Booth American, it was concluded that it would take some time to obtain a waiver of the rule, with no guarantee that such a waiver could be obtained. Booth American was interested in selling WRBR quickly and did not want to wait to see if a waiver could be obtained.

When he determined that Pathfinder would not be able to purchase WRBR on a timetable suitable to Booth American, John Dille wanted to try to find a way to preserve the JSA which was beneficial to Pathfinder in terms of cost savings. He also preferred to have the station acquired by a qualified broadcaster with a similar operating philosophy, who was not already a competitor in the market. John Dille considered several possible parties and decided to approach Dave Hicks, whom he had known for several years. John Dille and Dave Hicks met during the summer of 1993 to discuss Hicks' interest in the acquisition of the station. (Earlier, Mr. Hicks had been contacted directly by Booth American as a potential buyer for the station.) By this time, Campbell had discussed with the FCC staff whether it would be acceptable for the Dille Children to invest in the ultimate purchaser of WRBR as nonattributable parties and had reported to John Dille that this could be done.

As discussed in more detail in response to Question 7, John Dille also viewed the acquisition of nonattributable interests in WRBR by his children as a good investment opportunity for them and discussed with Dave Hicks a structure in which the Dille Children could be minority shareholders and Mr. Hicks expressed his agreement to such an arrangement. John Dille did not discuss with Mr. Hicks or Campbell whether he would or could loan money to his children to fund their investment in the station; however, it had been his intention to do so from the start and

he had received advice from other legal counsel for Pathfinder at an earlier stage in the transaction that he could make loans to his children for their investment in Hicks Broadcasting LLC.

John Dille was not aware that the FCC staff wanted him to certify that he would "not participate in the financing of the purchase of the station for [his] children." It was always his intention from the beginning to have the opportunity to loan his children funds which they, in turn, either loaned to Hicks Broadcasting LLC or used to make capital contributions to the company. Although the letter from Campbell mentioned in Question 4, dated February 17, 1994 and addressed to Hicks indicated a "cc" to Robert A. Watson ("Watson"), neither John Dille nor Watson recall seeing that letter at the time and did not become aware of it until this proceeding. John Dille was never advised that he could not provide funds to his children, whether in the form of gifts or loans, to help finance the purchase of their membership interests in Hicks Broadcasting LLC and the amendment signed by John Dille dated February 22, 1994, did not state that he would not loan or give funds to his children for their investment in Hicks Broadcasting LLC. The amendment stated that John Dille would not "finance or guarantee the purchase of the station by Hicks Broadcasting," which, in fact, he has not done. John Dille perceived a clear distinction between making a business investment directly in Hicks Broadcasting LLC and making a parental loan to his children.^{6/}

4. With respect to Question 3 above, Alan C. Campbell stated in his letter of February 17, 1994 that he was forwarding a statement to Mr. Dille to sign. Is this the same statement that was submitted as an amendment to the WRBR assignment application on February 24, 1994? If not, provide copies of any intervening correspondence, drafts or notes concerning the information that Mr. Campbell asserted the staff requested in connection with the WRBR assignment application. If written documentation is not available, reduce the recollections of appropriate parties to this matter to writing.

^{6/} The Commission has determined in the context of real party-in-interest issues that a parent may provide funds to his or her children without having that activity convert the parent into a party to the application or the real party-in-interest. *Cannon's Point Broadcasting Co.*, 93 FCC 2d 643, 655 (Rev. Bd. 1983), *recon. denied*, 94 FCC 2d 72, *review denied*. FCC 84-161 (April 13, 1984) (subsequent history omitted) (no real party-in-interest issue based merely on financial and business ties among family members). See also *North Idaho Broadcasting*, 8 FCC Rcd. 1637, 72 RR 2d 360 at ¶ 9 (1993); *Magdalene Gunden Partnership*, 2 FCC Rcd 5513 at ¶ 14 (Rev. Bd. 1987) (petitioner failed to establish anything beyond a familial relationship and financial assistance where a father gave his daughter the funds she needed to purchase a 20 percent interest in the applicant and to prosecute the application although daughter is under no obligation to repay him); *High Sierra Broadcasting*, 96 FCC 2d 423 ¶ 14 (Rev. Bd. 1983) (no party-in-interest issue where father loaned money to children for their capital contribution to an applicant-partnership).

John Dille signed the only statement that he was ever aware of or that was presented to him, that is, the one dated February 22, 1994, and filed with the Commission as part of an amendment to the application of Hicks Broadcasting LLC on February 24, 1994. He was not presented with any other documents or correspondence, other than the statement he signed. More particularly, John Dille did not become aware of Campbell's February 17, 1994 letter to Dave Hicks prior to this proceeding, by which time, as reflected elsewhere in this response, any loans by John Dille to his children in connection with the payment of the Booth American note had already been made and, as noted, repaid by Hicks Broadcasting LLC.²⁷

To the best of his recollection, Campbell received a call from someone at the Commission (he does not recall who called) requesting an amendment to the application of Hicks Broadcasting LLC. Shortly thereafter Campbell prepared the letter to Mr. Hicks dated February 17, 1994, and assumes that it reflects his conversation with the staff. Campbell prepared two covering amendments to be signed by Dave Hicks and which were signed by him on February 23, 1994, returned to Campbell and filed with the Commission by another attorney in Campbell's office on February 24, 1994.

Campbell also prepared the amendment which was signed by John Dille, dated February 22, 1994 and attached to Dave Hicks' covering amendment dated February 23, 1994. The amendment was intended by Campbell to be responsive to the staff's request. Campbell has no independent recollection in his brief conversation with the staff person that he or she said that John Dille could not or should not loan funds to his children. The question of whether John Dille could loan funds to his children which they would, in turn, use for their investment in Hicks Broadcasting LLC is a different question from whether he would finance the purchase of WRBR for his children, and is also a different question from whether he would finance the purchase of WRBR by his children. Campbell never advised Mr. Dille that he could not make loans to his children.

Although no prior drafts of the form of amendment signed by John Dille exist, Campbell's recollection, based upon the wording of his February 17, 1994, letter, is that he contemplated and may have drafted the same statement to be signed by both John Dille and his father, John F. Dille, Jr. (since deceased), and may have spoken to either John Dille or Watson concerning the senior Mr. Dille's health. Campbell decided that the form of amendment could be signed only by John Dille in light of his father's poor health at the time and may have discussed this point with the Commission staff, but is not sure. The form of amendment signed by John Dille is identical to the form in Campbell's records, but it appears that it was retyped verbatim before being executed.

²⁷ Had John Dille been aware that he should not provide funds directly to his children to be used for their investments in WRBR, appropriate institutional lending could have been arranged for Alec, Sarah and Flint.

A copy of the form of amendment from Campbell's records, which is the only other draft of the amendment of which he is aware, is attached hereto as Exhibit 4.

5. **Did Mr. Dille have a relationship with the Michigan National Bank that played any role in Mr. Hicks' obtaining the \$25,500 letter of credit? Did Mr. Dille or his children play any role whatsoever, including but not limited to acting as cosigner or guarantor, to assist Mr. Hicks in obtaining the \$25,500 letter of credit that was used for the November 1993 deposit on the purchase of WRBR?**

John Dille does not have, nor has he ever had, any relationship with the Michigan National Bank and neither he nor his children played any role, including acting as cosigner or guarantor, to assist Mr. Hicks in obtaining the \$25,500 letter of credit.

6. **What was the source of funds for any payments that have been made on the note to Booth American (for the purchase of WRBR) since April 1995? was Pathfinder or was Mr. Dille the direct or indirect source of any of these funds?**

After the payment to Booth American due on April 1, 1995 and made on March 22, 1995 (and discussed in response to Question 2), no payments were due to Booth American for one year. Beginning April 1, 1996, six monthly payments in the amount of \$10,000.00 were due each month through September 1, 1996, at which time the monthly payments increased to \$15,000.00 per month beginning October 1, 1996, and continuing through to December 1, 1997, with a final payment for the remaining balance of \$240,000.00 due on January 1, 1998.

Dave Hicks made a loan of \$10,000.00 to Hicks Broadcasting LLC on March 29, 1996, for the payment due to Booth American on April 1, 1996. (A copy of Hicks' March 28, 1996, personal check to Hicks Broadcasting LLC is attached hereto as Exhibit 6A.) Alec, Sarah and Flint made loans of approximately \$3,333.33 each to Hicks Broadcasting LLC on April 30, 1996 for the payment due to Booth American on May 1, 1996. For these two payments, therefore, the contributions were made roughly on a pro rata basis (i.e., Hicks contributed 50% and Alec, Sarah and Flint collectively contributed 50%, instead of a 51% to 49% split). The \$10,000.00 payment due to Booth American on June 1, 1996, was made using loans from Hicks, Alec, Sarah and Flint on a pro rata basis, with Hicks contributing \$5,100.00, or 51%, and Alec, Sarah and Flint each contributing approximately \$1,633.00, or 16.33% each. (A copy of Hicks' June 19, 1996, personal check to Hicks Broadcasting LLC is attached hereto as Exhibit 6B.) John Dille loaned funds to his children, which they, in turn, loaned to Hicks Broadcasting LLC, for their pro rata share of the note payments to Booth American due on May 1 and June 1, 1996.

As discussed more fully in response to Question 8, starting in June 1996 and continuing to the present Hicks Broadcasting LLC and WRBR(FM) have had a positive operating balance, and all payments made to Booth American starting with and including the payment due on July 1, 1996 have been financed through the successful operations of WRBR.

A summary of the payments made to Booth American, including the date due, the date paid, the amount due, and the source of funds, is as follows:

<u>Date Due</u>	<u>Date Paid</u>	<u>Payment Amount</u>	<u>Source of Funds</u>
10/1/94	9/29/94	\$5,000.00	Pro Rata by Members
11/1/94	10/26/94	\$5,000.00	Pro Rata by Members
12/1/94	11/23/94	\$5,000.00	Pro Rata by Members
1/1/95	12/21/94	\$5,000.00	Pro Rata by Members
2/1/95	1/25/95	\$5,000.00	Pro Rata by Members
3/1/95	2/22/95	\$5,000.00	Pro Rata by Members
4/1/95	3/22/95	\$105,000.00	Alec, Sarah and Flint
4/1/96	3/27/96	\$10,000.00	Hicks
5/1/96	4/24/96	\$10,000.00	Alec, Sarah and Flint
6/1/96	5/22/96	\$10,000.00	Pro Rata by Members
7/1/96	6/26/96	\$10,000.00	Station Operations
8/1/96	7/24/96	\$10,000.00	Station Operations
9/1/96	8/21/96	\$10,000.00	Station Operations
10/1/96	9/25/96	\$15,000.00	Station Operations
11/1/96	10/23/96	\$15,000.00	Station Operations
12/1/96	11/20/96	\$15,000.00	Station Operations
1/1/97	12/25/96	\$15,000.00	Station Operations
2/1/97	2/5/97	\$15,000.00	Station Operations
3/1/97	2/26/97	\$15,000.00	Station Operations
4/1/97	3/26/97	\$15,000.00	Station Operations

As can be seen from this summary, except for the \$105,000.00 payment due on April 1, 1995, all payments to Booth American on June 1, 1996 or before were paid roughly on a pro rata basis by the members, with Hicks paying his 51% pro rata share, and all payments due after June 1, 1996 have been financed through the operations of WRBR. John Dille was not the source of any of the funds contributed by Hicks.

In December 1995, the members agreed to use accumulated WRBR positive operating balances to repay approximately \$43,000 in member loans made by Alec, Sarah and Flint, which essentially was the \$8,000 each loaned to Hicks Broadcasting LLC on April 19, 1994, in the form of the return of the escrow deposit after the closing on the purchase of the station, and the \$35,000.00 each loaned to the Company on March 24, 1995, for the \$105,000.00 payment due

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to Booth American on or before April 1, 1995. Thus, after this loan repayment to the Dille Children, at the end of 1995, the total contributions by Hicks on one side and the Dille Children on the other side to Hicks Broadcasting LLC in the form of paid in capital and outstanding loans was at the 51% - 49% ratio, respectively.^{8/}

7. What is the earliest date that Mr. Hicks reached an understanding with either Mr. Dille or Mr. Dille's children that Mr. Dille's children would have an option to purchase Mr. Hicks' interest in Hicks Broadcasting LLC?

The Hicks Broadcasting LLC application to acquire WRBR properly indicated in response to Section II, Question 15 that there were no documents, contracts or understandings relating to future ownership of the station, including options, since at that time no such agreement or understanding existed.^{9/} While Dave Hicks and John Dille had discussed the idea of an option, right of first refusal or similar type agreement, these preliminary discussions had not resulted in any understanding or agreement as of the time the assignment application was filed on December 22, 1993, or at any time thereafter until shortly before the closing on March 31, 1994.

John Dille sent a note to John Booth, the principal of Booth American involved in the sale of WRBR, dated August 17, 1993, indicating that his children would have an "arrangement-option-agreement" to acquire Dave Hicks' shares; however, no such understanding, in fact, existed as of that date.^{10/} (Mr. Hicks was not aware of John Dille's note to John Booth and it did not reflect Hicks' understanding of the status of discussions up to that time.) The memorandum from Campbell to John Quale, Booth American's counsel, discussing the structure of the deal,

^{8/} Although Question 6 is limited to the source of funds used to make payments to Booth American, it should be noted that in February, 1996, the Dille Children each funded a portion of a loan to Hicks Broadcasting LLC for the purchase of new programming for WRBR. As a result, the amount loaned to the company by the Dille Children was disproportionate to the overall amount loaned by Dave Hicks. However, the ratio of paid in capital and the amount of loans used for payments on the Booth American note has remained at the 51% - 49% level.

^{9/} Dave Hicks initially penned-in answers to the questions on FCC Form 314 and sent his draft of the form to Alan C. Campbell, communications counsel for the company. Campbell was aware that the Dille Children would hold minority interests, but he was not aware that the parties were discussing the concept of an option-type arrangement or the status of any such discussions. Campbell did not discuss with Hicks or John Dille whether their discussions had reached the stage that they should be reported in the assignment application.

^{10/} See pages 6-8 and 13 of the Opposition, which focus on the deposition testimony of the participants dealing with the issue of when an agreement or understanding may have been reached.

also dated August 17, 1993, failed to reference any option-type arrangement. Mr. Dille believed throughout the negotiations that even if his children did not acquire some right to purchase Hicks' interest that the deal was still an excellent investment opportunity for them.

Mr. Hicks' recollection is certain that an agreement concerning the Dille Children's option did not exist until shortly before the Operating Agreement for Hicks Broadcasting LLC was signed on March 31, 1994, and is consistent with the timing of the creation of the company's Operating Agreement, which includes the option-type provisions. The initial draft of the Operating Agreement, which was not prepared and distributed until March 4, 1994, did not include Section 7.4, Sale, Assignment, Call Provision or Other Voluntary Transfer of Interest. This provision first appeared in a subsequent draft of the Operating Agreement that was distributed on March 24, 1994. Thus, no agreement was reached concerning this provision until some time between March 4 and March 31, 1994.

8. **Pathfinder states in its Opposition that Pathfinder made payments to creditors and employees on behalf of Hicks Broadcasting from time to time that exceeded the cash balance available from and attributable to Hicks Broadcasting LLC. What are the periods of time -- give dates and lengths of time -- that Pathfinder continued to make payments on behalf of Hicks Broadcasting LLC that exceeded the cash balance available from and attributable to Hicks Broadcasting? Provide details as to the types of payments that were made during these times, the amounts, and the parties who were paid.**

Under the JSA and accounting agreement (outlined in detail in response to Questions 1 and 9), all expenses for Hicks Broadcasting LLC are paid through the common bank account used for Pathfinder, Hicks Broadcasting LLC and other entities. However, there were periods of time whereby Pathfinder made payments on behalf of Hicks Broadcasting LLC that exceeded its positive balance from operations.^{11/} This occurred during two periods of time - from June 1994 through March 1995 and from December 1995 through May 1996. During all other months, WRBR has had a positive operating balance.

^{11/} Question 8 uses the term "cash balance", which is not accurate in the sense that it suggests a running balance based on a cash receipts method of accounting. Although the actual performance of WRBR and WBYT under the JSA ultimately depends on dollars collected, the more proper term to use is positive or negative "operating balance", rather than cash balance. Regardless of the accounting nuances used, Pathfinder has reexamined this practice in light of the concern reflected in the Commission's inquiry and has advised Hicks Broadcasting LLC that it will have a 30-day period in which to eliminate a negative operating balance or WRBR expenses (exclusive of joint expenses under the JSA) will not be paid.

The dollar amounts listed below indicate the cumulative amounts of Hicks Broadcasting LLC's negative operating balance at the end of each month. However, in several instances although the cumulative operating balance at the end of a particular month was negative, that month's operating balance was positive. For example, the cumulative negative operating balance at the end of January 1995 was \$80,769 (this amount represented less than 8% and 6.5% of WRBR's billings in 1995 and 1996, respectively) and the cumulative negative operating balance at the end of February 1995 was reduced to \$76,046; therefore, after the process of recording and allocating all appropriate expenses for February 1995 to Hicks Broadcasting LLC was completed, WRBR showed a positive operating balance of \$4,723 for that month. Although Hicks Broadcasting LLC had a cumulative negative operating balance from January through March 1995, and again from February through May 1996, WRBR actually had a positive operating balance during each of those months.

<u>Month</u>	<u>End of Month Cumulative Amounts of Negative Operating Balance</u>
<u>1994</u>	
June	\$7,132
July	\$19,695
August	\$21,943
September	\$31,535
October	\$37,209
November	\$58,003
December	\$63,598
<u>1995</u>	
January	\$80,769
February	\$76,046
March	\$56,460
December	\$22,678
<u>1996</u>	
January	\$56,939
February	\$52,340
March	\$48,290
April	\$44,983
May	\$10,843

All operating expenses attributable to WRBR are paid through the Pathfinder common account and charged to WRBR's operating balance. The payments Pathfinder makes under the JSA and accounting agreement include, but are not limited to, expenses such as payroll (ranging from \$27,568.24 in June 1994 to \$35,121.65 in May 1996), rent, property taxes, ASCAP, BMI, SESAC, Arbitron, Associated Press, various talent fees (in addition to payroll), various selling

expenses, telephone service (AT&T and Ameritech), cellular telephone service (Sprint Spectrum), Postmaster, Federal Express, UPS, Firstcom Broadcast, legal fees, Business System, Custom Business Systems, Inc. (traffic system), Radio Aids, petty cash, expense reimbursements paid to employees, *etc.* Pathfinder retains detailed accounts of who it pays, the amount it pays and on whose behalf it makes the payments. However, due to the volume of these entries and their proprietary nature, it would not be practical to list them all here. If requested by the Commission, Pathfinder will provide copies of its account ledgers pertaining to the JSA and accounting agreement for the periods in question, with a request that such detailed records not become public or be provided to competitors.

As stated above, the accounts that Pathfinder maintains for Hicks Broadcasting LLC under the JSA and the accounting agreement are extensive and are specific as to the dollar amounts and companies paid. Dave Hicks is provided with a full financial statement each month and has access to the account books and ledgers at any time. He is aware of the expenses that are paid, and if he requires clarification of any expenses, it is provided. Before payment, all expenses are approved by station department heads and, if applicable, allocated to entities in addition to WRBR, by that individual. Some expenses, like rent and utilities, are recurring and charged one half to WRBR and one half to WBYT automatically.

There are several internal checks and balances to ensure that the correct station under the JSA is attributed with the proper expenses. The first check is with personnel at each individual station. The accounting system is set up so that personnel at each station codes its own bills with a number which allocates an invoice to an individual station and to the proper expense category for that station. Before the bills are paid, they are checked to ensure that they are reasonable (e.g. not out-of-line with similar expenses in prior months); if there appears to be a problem, the accounting department reviews the matter with the appropriate station personnel. Separate monthly budgets are prepared for WRBR and WBYT and each month the budget for each station is compared with that station's actual expenses. If the expenses exceed the budget significantly, the allocation of expenses is checked to make sure that expenses were allocated to the correct station. If a mistake is discovered, the mistaken amount is reclassified to the proper account as an accounting entry at the end of the month, or whenever the error is discovered.^{12/}

^{12/} It should be noted that Pathfinder was the subject of an IRS audit in the fall of 1996 for tax year 1994, which included an examination of the WRBR expense and income allocation process described above. The IRS raised no questions with respect to these procedures.

9. **Is there a written agreement -- other than the JSA -- pursuant to which Pathfinder provides financial and accounting services for Hicks Broadcasting? If so, provide a copy of this agreement. If not, describe the terms of any oral agreement or understanding pursuant to which Pathfinder has been providing financial and accounting services for Hicks Broadcasting since April 1994.**

Pathfinder and Hicks Broadcasting L.L.C. entered into an accounting agreement (which may be cancelled by either party on 60 days notice) on March 23, 1994, whereby Pathfinder provides general accounting, accounts payable, preparation of payroll checks, and accounting for related withholding taxes, issuance of financial statements on a monthly basis and filing of required government reports relating to any accounting records for which Pathfinder is responsible. In exchange, Hicks Broadcasting LLC agreed to pay Pathfinder \$705 per month; the amount was increased to \$1000 per month as of January 1, 1996, pursuant to an amendment to the accounting agreement. Copies of the original agreement and the amendment are attached hereto as Exhibits 9A and 9B, respectively.

The decision to use the accounting methods and system already in place for all Pathfinder radio stations and for operations under the Booth American JSA was logical, efficient, accurate and the most cost effective option available and, in the judgment of Hicks Broadcasting LLC, in no way compromised Dave Hicks' control of and responsibility for WRBR. The computer hardware, software and systems were already in place, with experienced accounting personnel who were already schooled in radio station operations. Their functions and decisions are ministerial in nature and in no way compromise or usurp control of the finances of WRBR. The adoption of this system was reviewed with communications counsel prior to the closing on the purchase of WRBR on March 31, 1994 so that it was in place as of the closing.

10. **Provide information concerning all employees of either Pathfinder or Hicks Broadcasting (managerial and non-managerial) involved in WRBR's programming, finances and personnel. Address their roles with respect to each of these three areas of station operation, providing specific details. Explain which employees are employees of Pathfinder, which employees are employees of Hicks Broadcasting, on whose payroll these employees are listed, and in what manner and by whom they are paid.**

Hicks Broadcasting LLC employs nine employees (four fulltime and five parttime). They are employed by Hicks Broadcasting LLC and their full cost is allocated to the payroll of Hicks Broadcasting LLC.

Hicks Broadcasting LLC Employees

<u>Name</u> ^{13/}	<u>Title</u>	<u>Department</u>	<u>% of Salary All- located to Hicks</u>
JG	Prog. Dir/Announcer	Program	100%
GH	Announcer	Program	100%
DT	Announcer	Program	100%
David L. Hicks	Owner	Administration (1)	100%
MD	PT Announcer	Program	100%
Erlacher (Dille), Sarah	PT Promotion	Program	100%
SH	PT Board Operator	Program	100%
BN	PT Announcer	Program	100%
GR	PT Announcer	Program	100%

The following people are employed by Pathfinder and a portion of their salary is allocated to Hicks Broadcasting as shown below.

Pathfinder Employees

<u>Name</u> ^{13/}	<u>Title</u>	<u>Department</u>	<u>% of Salary All- located to Hicks</u>
HA	Acct. Executive	Sales	(2) 100%
WD	Acct. Executive	Sales	(2) 100%
MK	Acct. Executive	Sales	(2) 100%
PP	Acct. Executive	Sales	(2) 100%
KW	Acct. Executive	Sales	(2) 100%
RH	Chief Engineer	Engineering	33%
KH	Operations Manager	Program	50%
MP	Production/Continuity	Program	50%
BT	Event Coordinator	Program	50%
BW	Gen. Sales Manager	Sales	(3) 50%
VW	Office Mgr/Traffic	Administration	50%
Steve Kline	General Manager	Administration(3)(4)	50%

^{13/} In order to protect their privacy, employees are identified only by their initials, except for the three individuals identified elsewhere in this Response.

- (1) As explained in greater detail in response to Question 11, effective March 1, 1997, 100% of Dave Hicks' salary is being charged to WRBR.
- (2) Effective January 1, 1997 (the effective date of the amendment to the JSA), the Account Executives are being charged 100% to WRBR. Prior to that time, they were charged according to the original JSA under which 50% of their salary was allocated to WRBR from April 1, 1994 to August 31, 1996, and 40% of their salary was allocated to WRBR from September 1, 1996 to December 31, 1996. Under the amendment to the JSA effective January 1, 1997, 100% of each account executive's salary is allocated to WRBR.
- (3) Base pay 50/50, commissions or bonus allocated based on revenue by station.
- (4) Prior to the closing on WRBR, Steve Kline was the General Manager of WBYT and was in charge of the JSA for WBYT and WRBR, then owned by Booth American. Dave Hicks interviewed Mr. Kline and selected him to serve as the General Manager after the closing. He was instructed from the beginning as to the restrictions of his dual role and that decisions involving WRBR are to be made by Dave Hicks, that he should refrain from discussing with or involving John Dille in any way with the day-to-day operations of WRBR.

In addition to the above individuals, accounting services are provided to Hicks Broadcasting LLC by Pathfinder employees pursuant to the accounting agreement attached and described in response to Question 9. No portion of the cost of any accounting personnel of Pathfinder is allocated to Hicks Broadcasting LLC since those services are covered by the accounting agreement.

Dave Hicks and Hicks Broadcasting LLC have maintained effective control over the personnel, finances and the programming of WRBR through these operating arrangements. Dave Hicks has been a principal owner of radio stations for over 15 years and has worked in broadcasting for over 35 years. He is well aware of his duties and responsibilities as the controlling member of Hicks Broadcasting LLC, the licensee of WRBR, and properly exercises those duties and responsibilities.

11. **The record reflects that David Hicks became an employee of Pathfinder in January 1995. Provide information concerning Hicks' employment with Pathfinder until the present time, including positions held, dates and duties.**

Mr. Hicks was included on the executive payroll of Truth Publishing Company, Inc. ("Truth") starting September 1, 1994. Between September 1, 1994 and December 31, 1994, Mr. Hicks worked for Sign-Pro of Indiana, Inc. ("Sign-Pro") (a vinyl sign business owned by John Dille).

As of January 1, 1995, Mr. Hicks began to also provide assistance to all of Pathfinder's radio stations in the area of national sales and continued working parttime with Sign-Pro. Approximately 21% of Mr. Hicks' pay was allocated to Sign-Pro, 28% was allocated to the various radio stations, including WRBR (12.5%), in connection with his duties relating to national sales and 51% was allocated to WRBR. Mr. Hicks was paid on Truth checks, but his salary was allocated as described here.

Effective July 1, 1995, Mr. Hicks became the General Manager of WCUZ (AM/FM), Grand Rapids, Michigan and WAKX(FM), Holland, Michigan, and 49% of his salary was allocated to those stations until February 28, 1996, and the remaining 51% was allocated to WRBR. Mr. Hicks was no longer involved with Sign-Pro. Effective March 1, 1997, Mr. Hicks' salary is allocated 100% to WRBR, since he no longer is General Manager of the Michigan stations, which were sold by Pathfinder.^{14/}

^{14/} John Dille has no plans to hire Dave Hicks for Pathfinder or any other entity in which John Dille is involved as long as Mr. Hicks remains involved in the ownership of WRBR.

EXHIBIT 1

68

DAVID L. HICKS
SALLY J. HICKS
7483 COTTAGE OAK DR.
PORTAGE MI 49002-7867

10-26

CHS

4098

unt

25-30/440

PAY TO THE ORDER OF Hicks Beach

Put all checks
to : 3.7956

50.00

Two Thousand

DOLLARS

PS
Merrill Lynch

\$2550.00

BANK ONE BANK ONE COLUMBIA, MO

Dec 94

404400080415 3015

10-26-94

69

DAVID L. HICKS
SALLY J. HICKS
7463 COTTAGE OAK DR.
PORTAGE, MI 49002-7867

CM

4251
Management Account

25-801440

PAY TO THE
ORDER OF

Hicks

Two

AS
Merrill Lynch

BANK ONE

100-2300

1044000804 3015076845 4251

194

\$ 2,550.00

AND NO DOLLARS

Deposit to
3:7955

J

11-7-94

70

12-29

DAVID L. HICKS
SALLY J. HICKS
7483 COTTAGE OAK DR.
PORTAGE, MI 49002-7867

CMA Cash Management Account 4102

Dec 27 1994

PAY TO THE ORDER OF Hicks 3.2042357106 or 3.20.24 \$ 2,550
Two thousand Five Hundred Fifty and 1/10 DOLLAR

Merrill Lynch

BANK ONE BANK ONE COLUMBUS, OH
COLUMBUS, OH 43261

MEMO 30000 Payment W/232

J:0440008041 3015076845 4102

add Paid in Cent.
3.7955

41

DAVID L. HICKS
SALLY J. HICKS
7463 COTTAGE OAK DR.
PORTAGE, MI 49002-7867

CMA Cash Management Account

4256

JAN 28 1995

25-80/440

PAY TO THE ORDER OF Hicks Broadcasting Of Indiana \$ 2,550.00

TWO THOUSAND FIVE HUNDRED FIFTY AND 00/100 DOLLARS

Merrill Lynch

BANK ONE

BANK ONE COLLATERAL, INC.
COLUMBUS, OHIO 43261

HRS - 300TH PAYMENT

1:0440008041: 301507684511

4256

3-7955

1-31-95

72

DAVID L. HICKS
SALLY J. HICKS
7463 COTTAGE OAK DR.
PORTAGE, MI 49002-7867

CMA Cash Management Account

4258

February 27, 1995

25-30 days

PAY TO THE ORDER OF Hicks Broadcasting Of Indiana \$ 2,550.00

Two Thousand Five Hundred Fifty and No/100 DOLLARS

Merrill Lynch

BANK ONE BANK ONE, COLUMBUS, IN

Notes Payable For 1995

1:0440008041: 3015075845# 4258

3:7955

2-28-95

713